The Complete Anti-Federalist

Edited, with Commentary and Notes, by

Herbert J. Storing

With the Assistance of Murray Dry

VOLUME 5

Maryland
and
Virginia and the South

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A Note on Cross References

For convenient cross reference, and without any other editorial purpose, a three-part number has been assigned to each paragraph (or group of paragraphs where they are brief) of the writings assembled in *The Complete Anti-Federalist*. The first number denotes the volume, the second the position of the essay or series within that volume, and the third the paragraph. A reference to, for example, Federal Republican 3.16.13 locates a passage in the Review of the Constitution Proposed by the Late Convention, by A Federal Republican, which can be found in volume 3 of this edition. These numbers are distinct from any numbering by the authors themselves or any of their publishers; Centinel III, 2.7.73 refers to the third letter of Centinel, in volume 2 above. The abbreviation "intro." is used for Storing's introductions to volumes or parts of volumes as well as the introductions to individual texts. A reference to, say, 2.8.intro. denotes the introductory sketch and outline of the Federal Farmer, located in volume 2. Cross references to volume 1 are by page number. A cross reference from one note to another uses a three-part number plus a note number, so that the reader may refer to the text as well as the note if necessary.

Murray Dry

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Documentary History of the Constitution	*A Documentary History of the Constitution of the United States of America, 1786–1870; Derived from the Records, Manuscripts, and Rolls Deposited in the Bureau of Rolls and Library of the Department of State* (Washington, D.C., 1894–1905)
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PART 1

Maryland

Introduction

By the spring of 1788 six states had ratified the Constitution, and the center of activity shifted to the South, where only Georgia had ratified. The great danger to the Constitution here lay in the possibility of concerted southern action under the leadership of Patrick Henry of Virginia. The Maryland and South Carolina conventions were to meet before Virginia's, and the strategy of their Anti-Federalists was to work for a postponement if they could not secure rejection and thus to invite Virginia, with its strong Anti-Federalist group, to take the lead in rejecting or drastically modifying the Constitution.

Maryland was one of the most aristocratic of the American states, being governed by a group of planters and merchants linked by interest, background, and marriage under a constitution that required fairly high property qualifications for political participation, especially for holding senatorial and executive office. Despite a relatively low level of political participation, however, there was an active opposition group, led by Samuel Chase, and there had been considerable controversy over paper money.[1] When the legislature took up the proposed new Constitution in 1787 the Federalists agreed to delay the convention until April 1788, and to eliminate the normal property qualifications for delegates. The Senate also accepted a proposal for a "convention of the people for their full and free investigation and decision" in the place of its own words, "for their assent and ratification."[2] But the Federalists compromised out of strength and a desire to get on with the business. The convention elected was overwhelmingly Federalist. For unknown reasons the Anti-Federalist leaders did not appear in the convention for the first few days. By the time Chase, Luther Martin, and William Paca arrived, three days after the convention opened, the Constitution had gone through two readings and the question to adopt was before the House. Chase gave a lengthy speech opposing ratification. Knowing they had a safe majority and favorable rules, the Federalists listened in silence, offering no rebuttal. After an unsuccessful attempt by Paca to introduce amendments, the vote was taken, and on 26 April the Constitution was adopted 63–11.[3] The Federalists refused to accept even recommendatory amendments, which, after several days of attempted compromise in committee, were

rejected by a vote of 47–26. Maryland was the only state to ratify after Massachusetts that did not submit recommendatory amendments.

1. See Philip A. Crowl, *Maryland during and after the Revolution: A Political and Economic Study* (Baltimore 1943); Forrest McDonald, *We the People* 148–62.

2. Bernard Steiner, "Maryland's Adoption of the Federal Constitution," *American Historical Review* October 1899 and January 1900.

3. Paca voted with the majority. For accounts of the proceedings, see A. C. Hanson, "To the People of Maryland," *Documentary History of the Constitution* IV, 650–63, and the accounts of the Maryland Convention Minority 5.4 and John Francis Mercer 5.5.

Essays by A Farmer

(BALTIMORE) MARYLAND GAZETTE
February–April 1788

Among the more penetrating and comprehensive Anti-Federalist essays are these written by A [Maryland] Farmer, printed in the *Maryland Gazette* during February, March, and April of 1788, and here reprinted for the first time. On the issues of a bill of rights, political parties, and especially representation and simple versus complex government, the argument of this Maryland writer is indispensable to the student of Anti-Federalist thought.

While no direct evidence of authorship has been found, it seems likely that A [Maryland] Farmer was John Francis Mercer, a non-signing member of the Constitutional Convention and an active Maryland Anti-Federalist.[1] Born in Virginia, Mercer was educated at William and Mary, studied law under Thomas Jefferson, performed extensive military service during the Revolutionary War, and represented Virginia in Congress. On his marriage in 1785, he removed to Maryland, from which state he was chosen to serve in the Federal Convention in 1787, which he left before its work was finished. He played an active part in the Maryland opposition to the Constitution. On the establishment of the new government, Mercer aligned himself with the Republicans and devoted himself largely to politics. He served as a member of the Maryland House of Delegates, briefly as a member of the federal House of Representatives, and as Governor of Maryland.[2] The attribution is inconclusive since it depends almost entirely on a similarity in argument between those of A Farmer and those known to have been made by Mercer. Yet the similarity is striking and goes well beyond ordinary parallels among Anti-Federalists. The chief source of Mercer's views is Madison's report of his speech in the Convention on 14 August. We have in addition a useful letter to Jefferson, written in 1804, and the "Address to the Members of the Conventions of New York and Virginia," which is printed below.[3]

Both Mercer and A Farmer find their central argument in the contention that the Constitution falls between the two stools of genuine simple government and genuine mixed or complex government. Like many Anti-Federalists, they are much concerned with representation, but their

analyses of representation—as a system tending to lead to aristocratic domination and then to tyranny unless held in check by permanent and fixed orders—are very similar to one another and quite distinct from the more usual discussions by, for example, Samuel Chase of Maryland and Richard Henry Lee of Virginia.[4] Both Mercer and A Farmer are favorably impressed with England as an example of mixed government, and both argue for a strong executive in any stable complex government.[5] Their concern for the preservation of the states is less distinctive, but here too Mercer and A Farmer are unusual in their particular discussion of the federal system as a system of balance of power[6] and in their concern with party.[7]

References are provided to the main points of similarity, so that the reader can judge for himself the accuracy of the editor's opinion that Mercer was in all probability the author of this interesting and important series of essays.

A Farmer took up his pen to reply to a Federalist pamphlet by Aristides, the pseudonym of Alexander Contee Hanson, a Maryland legislator and judge.[8] First he replies to what Aristides had described as his attack on "the whole body of anti-federalists in their stronghold," the absence of a bill of rights. While making the usual arguments here, A Farmer also turns a common Federalist view on its head by contending that, whereas in a monarchy numbers are typically on the side of the individual, in a popular government the danger to the individual lies in the interests or heated passions of the majority and that, therefore, the freer or more democratic the government, the greater the need for clear expressions of individual rights. A Farmer concludes this essay with the question whether a national government is to be preferred for the United States to a league or a confederation.

In his second essay A Farmer postpones a promised discussion of consolidation and takes up the subject of representation. This is one of the four or five major Anti-Federalist discussions of this critical issue. Here and throughout there is a tension in the author's thought between a defense of simple government in principle and an objection to a *premature* adoption of a complex government for which America does not provide the materials. He begins with sharp sarcasm about the brash confidence of his opponents in their new knowledge and an unusually strong statement (even for the conservative Anti-Federalists) that "there is nothing solid or useful that is new" (II, 5.1.22). Far from being unknown in former times, government by representation is coeval with mankind but, being the government most liable to corruption, has always been of short duration. Broadly speaking, the argument in this important if somewhat loose essay is that representative government is aristocracy, which is corrupt and tyrannical and which leads the desperate people to hand themselves over to a single man. Normally, then, representative government leads to tyranny supported by a standing army; but A Farmer holds out a possibility of tempering the aristocracy with a strong and independent executive (unlike the union of Senate and Execu-

tive under the Constitution). The usual course of degeneration will be speeded and exaggerated in the United States, however, when thirteen complicated forms of government are bound in a single further complicated government to the complete destruction of "all responsibility (the only test of good government)" (II, 5.1.34). The question of standing armies, their effects on liberty, and guards against them, occupy the latter half of the essay (II, 5.1.35–53).

In the third essay, A Farmer takes up the question of whether a national or a federal government is to be preferred. While a national government will add to the dignity and splendor of the United States, true happiness lies in simple quiet government. However, A Farmer sees little in the present corrupted manners of his fellow citizens to suggest that they are now capable of sustaining self-government. So far as relations among the states and defense against foreign intrigue or corruption are concerned, a confederation of small popular governments is best. In the latter part of the essay, A Farmer provides a very interesting sketch of the three main classes in the United States, and their probable future (III, 5.1.56–60). He ends with the observation that "on the preservation of parties, public liberty depends," and that the aim of a free and wise people should be to balance parties so that from the weakness of all they may be governed by the moderation of the combined judgments of the whole (III, 5.1.60).

In the fourth essay A Farmer criticizes the absence of provision for trial by jury in civil cases and discusses the value of the jury as the democratic part of the judiciary—the people's check on government and their school in public affairs.

In his very important and complex fifth essay, A Farmer returns to his major theme of representation. The discussion begins with "governments of simplicity and equal right," which have not been dealt with faithfully in theory and practice (V, 5.1.69). For whatever reasons, we seem to be tending toward mixed government with permanent and fixed orders. If this is to be our direction, let us proceed slowly and carefully. Government by representation "sets all system at defiance" by inducing constant change (V, 5.1.71). A representative system can only succeed if based on fixed and permanent orders, but the only such order in America is the yeomanry, which is powerless. The Constitution tries to erect a republic on the ruins of a corrupt monarchy. A government for the United States founded on representation requires at least an executive for life and a senate also for life appointed by the executive. The problem is to prevent the executive from becoming hereditary, for which reason the vice presidency is important (V, 5.1.72–74).

Having considered the dangers of representation and the requirements of a representative system—if that is what the United States must have—A Farmer returns in the conclusion of this essay to the advantages of simple government (V, 5.1.75–82). The English system, although good of its kind,

is undeservedly praised. It is a rational system; but it required the introduction of a ministerial system and corruption to support it, and it does not prevent poverty in the lower orders and disorder. England may be compared with Switzerland, whose government is simple and in the hands of the people personally, where every citizen is legislator and soldier and where liberty, peace, and prosperity reign. Government should be in the hands of the people, that is, those who hold the property of the soil. With government in the hands of the freeholders, with reasonable sumptuary laws, and with the institution of seminaries of useful learning, the people would cease abusing their governments and would "wade up to their knees in blood" to defend them (V, 5.1.82).

In his sixth essay A Farmer replies to Aristides on various minor points, chiefly the question of concurrent jurisdiction of federal and state courts.

A Farmer concludes with a long essay, extending over several numbers of the *Maryland Gazette,* in which he replies to some further criticisms of Aristides and summarizes his own argument. He traces the decline of government from its initial devotion to equal rights to its unavoidably (or so A Farmer seems to think) unequal operation. Oppressed by the few, the people call on one man to rule them (VII, 5.1.94–100). This monarchy, in turn, suffers its inevitable corruption, which in turn corrupts the whole society (VII, 5.1.101–3). At length, the people look to heaven for that solace and equality they are denied on earth, but religious tyranny and corruption support and are supported by civil tyranny and corruption (VII, 5.1.104–7). Despite the loss of civil and political liberty, Europe has at least preserved a degree of social happiness impossible in great empires, due to the moderating influence of a system of balance among national powers (VII, 5.1.108–11). A Farmer concludes with reflections on the American state governments, the imperfections of which have led to the present agitations. Yet the future seems likely to be worse than the past (VII, 5.1.112–13). "[T]he truth is that we aimed at, and still aim at premature public splendor and private luxury, forgetting that bodies politic, like natural bodies, have their duration of manly vigor and the decline of age. . . . We wanted to be every thing at once—that is what we now wish, and in the event we shall be nothing or worse than nothing, we strived to patch up the ruined fabric of the British constitution for our use, and . . . we never reflected, that we had none of the distinctions of ranks which preserve that government—that the state of our society was altogether different—and that we had only the wishes, but none of the means" (VII, 5.1.113).

(Indecipherable words or passages in the original are indicated here by brackets and space.)

1. If it is assumed that the author was a fairly prominent Maryland Anti-Federalist, a reasonable assumption especially given the somewhat aristocratic structure of Maryland politics, Mercer becomes one of a handful of possibilities, and some of these had expressed themselves publicly in other forms. Mercer probably was "re-

tired in the country," as A Farmer says he was in his sixth essay (VI, 5.1.84), on his estate in Anne Arundel County. The last of A Farmer's pieces was published on 22 April 1788, the day after the opening of the Maryland Convention (where Mercer was present), and it may be that the promised continuation was cut off by the necessity to attend the convention. None of this proves more, of course, than that Mercer might have been the author. For an address of John Francis Mercer, see 5.5.

2. James Mercer Garnett, "John Francis Mercer," *Maryland Historical Magazine* September 1907, pp. 209–12; Mary W. Williams, "John Francis Mercer," *Dictionary of American Biography* XII, 543–44.

3. Mercer 5.5; *Farrand* II, 284–85 (14 August); *Maryland Historical Magazine* September 1907, pp. 209–12.

4. See II, 5.1.22–29; V, 5.1.72; VII, 5.1.113; Farrand II, 284; Mercer 5.5.5. Cf. Federal Farmer, II, 2.8.15 and n. 11. Despite the distinctiveness of the argument presented by Mercer and A Farmer, I have nevertheless contended that it is characteristic, in the sense of explicitly stating and examining a persistent but usually obscured Anti-Federalist theme or problem.

5. See II, 5.1.31; V, 5.1.74–75; Farrand II, 284–85; Mercer 5.5.11.

6. See III, 5.1.52; VI, 5.1.109; *Maryland Historical Magazine* September 1907, p. 210.

7. See III, 5.1.60; *Maryland Historical Magazine* September 1907.

8. See Ford, *Pamphlets* 217–57.

I
15 February 1788

When men, to whom the guardianship of public liberty has been committed, discover a neglect if not contempt for a bill of rights—when they answer reasons by alledging a fact,—which fact too, is no fact at all—it becomes a duty to bear testimony against such conduct, for silence and acquiescence in political language are synonimous terms.[1] 5.1.1

If men were as anxious about reality as appearance, we should have fewer professions of disinterested patriotism—true patriotism like true piety, is incompatible with an ostentatious personal display.

In a world more cautious than correct, the intrusion of private names in a public cause, is generally considered as a sacrifice of prudence to vanity, and not unfrequently censured as impertinent—in either view it is unreasonable to require it—It is more, it is inadmissible—it would be betraying one of those inestimable rights of an individual, over which society should have no controul—the freedom of the press—and the only recompence for the treason, would be a boundless increase of private malice.[2] 5.1.2

That men who profess an attachment to the liberty of the press, should also require names, is one of those instances of human weakness and inconsistency, that deserves rather pity than resentment. Political as well as religious freedom has ever been and forever will be destroyed by that invariable tendency of enthusiasts and bigots to mark out as objects of public resentment and persecution, those who presume to dispute their opinions or 5.1.3

question their infallibility—and whilst there are men, enthusiasm and bigotry will prevail—it is the natural predominance of the passions over reason—The citizens of America are not yet so agitated by the phrenzy of innovation as to forget—that the object of public inquiry is, or ought to be, *truth*—that to convert *truth* into *falsehood, right* into *wrong,* is equally beyond the reach of the *good,* the *bad,* the *great* and the *humble*—A great name may indeed *impose falsehood* for *truth—wrong* for *right*—and whenever such voluntarily offer themselves, there may be ground for suspicion—But the people may listen with safety to those, who assert no other claim to their attention, than the *reason* and *merit* of their remarks.

5.1.4 To assert that bills of rights have always originated from, or been considered as grants of the King or Prince, and that the liberties which they secure are the gracious concessions of the sovereign, betrays an equal ignorance of history and of law, or what in effect amounts to the same thing a violent and precipitate zeal.[3]

5.1.5 I believe no writer in the most venal age, has ever openly asserted this doctrine, but the prostituted, rotten Sir Robert Filmer,[4] and Aristides—And the man who at this day would contend in England that their bill of rights is the grant of the King, would find the general contempt his only security—In saying this, I sincerely regret that the name of Aristides should be joined with that of Sir Robert Filmer, and I freely acknowledge that no contemptible degree of talents, and integrity render him who uses it, much more worthy of the very respectable association he has selected for himself—But the errors of such men alone are dangerous—the man who has too much activity of mind, or restlessness to be quiet, qualities to engage public and private esteem, talents to form and support an opinion, fortitude to avow it, and too much pride to be convinced, will at all times have weight in a free country, (especially where indolence is the general characteristic) though that weight he will always find impaired in proportion as he indulges levity, caprice and passion.

5.1.6 I will confine my inquiry to the English constitution—Example *there,* is in a great measure law *here*—and the authority of an American judge on a point of English law, should be digested with coolness and promulgated with caution, because it is frequently conclusory.

The celebrated and only bill of rights of Great-Britain, which is considered as the supreme law of the land, and not to be questioned or impeached in their courts, was the work of that convention of lords and commons in 1688, which declared that *King James 2d, had abdicated the crown, and that the throne had thereby become vacant,* and who after they had compleated and asserted this glorious declaration of the unalienable rights of their fellow citizens, pursuing the peculiar duty of a convention, conferred the crown of the three kingdoms on an alien and foreigner, William the 3d.

5.1.7 Can any man imagine that this convention could at that time, have considered these rights as the grant of a King, whom they previously declared

to have abdicated the throne, or the gracious concessions of a Prince whom they were about to deprive forever of the crown? Or could they have considered this bill of rights as the concession of Prince William, at that time a foreigner and alien, not entitled to hold a foot of land, or any of the common rights of citizenship, and who could afterwards only derive his title to the crown from the same source, which gave authority and sanction to this fundamental and most inestimable law? or, could the British nation at that time, or ever since, have viewed this declaration, as the grant and concession of a King or Prince, when no King or Prince was at that time in existence?—But should there remain any minds yet unsatisfied, I refer such to the debates of that convention, which are preserved in Grey's debates in parliament,[5] and there will be found in them, the principles of equal liberty, the inherent and unalienable rights of men, as amply and ably discussed, and as fully recognized by the authors of that blessing, the artists of that British palladium, as ever they have since been by the animated patriots of America, or the present age.—I also refer them to an inestimable little treatise composed on this occasion by that accomplished lawyer and patriot, afterwards the Lord Somers—High Chancellor of Great-Britain—then a member of the convention, and chiefly instrumental in their great work—a pamphlet that should find a place in the library of every American judge at least[6]—Whoever peruses these, will discover undeniable evidence, that the British convention, considered this their declaration, as the concession of no Prince, but the Prince of Heaven—whom alone they acknowledged as the author of their liberties—they will there find that a bill of rights, is an enumeration of those conditions on which the individuals of the empire agreed to confirm the social compact; and consequently that no power, which they thus conditionally delegated to the majority (in whatever form organized) should be so exercised as to infringe and impair these their natural rights—not vested in SOCIETY, but reserved to each member thereof.

This was not the doctrine of that period alone—It was the common law 5.1.8
and constitution of England, so asserted and maintained by the ablest lawyers of every age of the empire.—The petition of right, which came forward in the reign of Charles 1st, said to have been originally penned by the celebrated Lord Coke—although in its title a contradiction in terms, is yet in substance equally strong and clear—asserting the rights of the people to be coeval with the government—We find this principle strenuously and ably maintained through all the works of this great man, and to this doctrine he finally, with the devotion of a freeman, and the fortitude of an Englishman, sacrificed his vanity, his ambition and his avarice—This last act of an aged and venerable judge, has obliterated the errors of a youthful courtier—it has made his peace with posterity, who with gratitude and indulgence has forgiven the conduct of a court lawyer, which she might have punished with detestation, although she could not correct.

Here I cannot but observe what strenuous bill of rights men, all the great 5.1.9

luminaries of the English law have been: to Lord Coke and Lord Somers, I will add that [ ] of human nature, Sir Matthew Hale, in whom were united true Christian piety, Roman fortitude, and an understanding more than human.

This perfect man although firmly opposed to the violences of the mad fanatics of the age, stood up almost alone in that parliament which restored the regal government, in favor of a bill of rights—but the tide of popular rage, hastening to place the worthless Charles on the throne of his more worthless ancestors, was too strong, and the voice of that man could not be heard, who was the delight of his own and the admiration of succeeding ages.

5.1.10 It is true, that something like the doctrine of Aristides was frequently the language of courtiers and sycophants in the feeble reigns of the arbitrary Stuarts—times of impotent and impudent usurpation—and they grounded their assertions on the form of the statute of magna charta, a statute much estemed for the many valuable rights it ascertains—the enacting words of which imply it to be an act of the King—But Aristides must know that this was the frequent form of the ancient statutes, sometime it is the King alone enacts, sometime the King with advice and consent of the great men and Barons, and sometimes the three estates—Even at this day, the King uses these words in passing laws that bear the same implication; and we see even in America acts of authority issue under the name and signature of the Governor alone, who has not a voice unless the council are divided—But as to the legal and acknowledged authority of the King at the time of enacting magna charta, there can remain but little doubt. Henry Bracton a contemporary lawyer and judge, who has left us a compleat and able treatise on the laws of England, is thus clear and express—*Omnes quidem sub rege, ipse autem sub lege*, all are subject to the King, but the King is subject to the law[7]—It will hardly then be imagined, that the supreme law and constitution were the grants and concessions of a Prince, who was thus in theory and practice, subject himself to ordinary acts of legislation—But all these things are so amply discussed and the authorities so accurately collected in the publication of my Lord Somers, that a reference must be much more satisfactory than a repetition.

5.1.11 If I understand Aristides, he says that it would have been considered as an arrogant usurpation of sovereign rights in the members of convention, to have affixed a bill of rights—Can he reconcile this position with another opinion in his remarks, where he maintains that in offering this constitution, they could only act as private individuals, any of whom have a right to propose a constitution to the Americans to adopt at their discretion—In this view they could only have proposed—it is certain they could not have enacted a bill of rights—Nor would there have been any usurpation in WE *the people, of the States of New Hampshire, Massachusetts, &c. securing to ourselves and our posterity the following unalienable rights, &c.* which is

the stile of the new constitution—The convention have actually engrafted some of these natural rights, yet no one calls it an usurpation—nor can I believe that any of my fellow-citizens of the United States, would have discovered the least indignation, had they engrafted them all—The universal complaint has been that they have enumerated so few—But says Aristides, it would have been a work of great difficulty, if not impossible to have ascertained them—Are the fundamental rights of mankind at this day unknown? Are they so soon forgot? If they are not imprinted on our hearts, they are in several of the constitutions—Although various in form, they are certainly not contradictory in substance—It did not require the wisdom of a national convention to have reduced them into order, and such as would not have gained the suffrage of a majority, would never have been regretted by America—or, I will venture to assert, what I shall never believe, that the majority were very unworthy of the trust reposed in them—Nor yet can I believe, that the late convention were incompetent to a task that has never been undertaken in the separate States without success.

This constitution is to be the act of the individual members of the American empire—the highest source of terrestrial power with us—As it is a subsequent act, it not only repeals all prior acts of the same authority where it interferes with them—But being a government of the people of all the States, I do not know what right the citizens of Maryland for instance, have to expect that the citizens of Connecticut or New-Jersey, will be governed by the laws or constitution of Maryland—or what benefit a citizen of Maryland could derive from his bill of rights in a court of the United States, which can only be governed by the constitution and laws of the United States—Nor will it help the question to say, what will certainly be denied, that the future Congress may provide by law for this,—that an ordinary law of the United States can make, is an admission that it can unmake, and to submit the bills of rights of the separate States to the power of every annual national parliament, is a very uncertain tenure indeed. 5.1.12

If a citizen of Maryland can have no benefit of his own bill of rights in the confederal courts, and there is no bill of rights of the United States—how could he take advantage of a natural right founded in reason, could he plead it and produce Locke, Sydney, or Montesquieu as authority? How could he take advantage of any of the common law rights, which have heretofore been considered as the birthright of Englishmen and their descendants, could he plead them and produce the authority of the English judges in his support? Unquestionably not, for the authority of the common law arises from the express adoption by the several States in their respective constitutions, and that in various degrees and under different modifications—If admitted at all, I do not see to what extent, and if admitted, it must be admitted as unalterable by ordinary acts of legislation, which would be impossible—and it could never be of use to an individual, but in combating some national law infringing natural right.—To render this more intel- 5.1.13

ligible—suppose for instance, that an officer of the United States should force the house, the asylum of a citizen, by virtue of a general warrant, I would ask, are general warrants illegal by the constitution of the United States?[8] Would a court, or even a jury, but juries are no longer to exist, punish a man who acted by express authority, upon the bare recollection of what once was law and right? I fear not, especially in those cases which may strongly interest the passions of government, and in such only have general warrants been used—Suppose a case that must and will frequently happen, for such happen almost daily in England—That an officer of the customs should break open the dwelling, and violate the sanctuary of a freeman, in search for smuggled goods—impost and revenue laws are and from necessity must be in their nature oppressive—in their execution they may and will become intolerable to a free people, no remedy has been yet found equal to the task of detering and curbing the insolence of office, but a jury—It has become an invariable maxim of English juries, to give ruinous damages whenever an officer has deviated from the rigid letter of the law, or been guilty of any unnecessary act of insolence or oppression—It is true these damages to the individual, are frequently paid by government, upon a certificate of the judge that there was probable cause of suspicion—But the same reasons that would induce an English judge to give this certificate, would probably lead an American judge, who will be judge and jury too, to spare the public purse, if not favour a brother officer.

5.1.14 I could proceed with an enumeration of familiar [similar?] instances that must and will happen, that would be as alarming as prolix; but it is not my intention to ring an alarm bell—If I know myself I would rather conciliate than divide—But says Aristides the government may establish [ ] for such cases, though not commanded; what they will do I will not presume to say; but I can readily and will hereafter prove if they do, they will violate the constitution; and even admitting their power, it would be but a slender thread to [ ] so great a stake upon.[9]

5.1.15 Here I must meet a position that has been ingeniously advanced—That all powers and rights not expressly given, [ ] consequently reserved—If this is not downright political nonsense, it is at least, untrue in theory and impossible in practice—until man is gifted with one of the most important attributes of the Deity—that of fore knowledge and [ ] it will be impossible to limit *affirmatively* legislative [ ]. When a people part with the legislative power to government they can no more say, you shall make such and such [ ] than they can say, such and such events shall happen—[ ] must be regulated by events—All the precaution that [ ] to human wisdom, is the exertion of a *negative* [ ] speaking thus in the language of a bill of rights, no [ ] shall authorize, no plea of necessity shall justify the legislature in making a law to abolish or infringe the freedom of the press, or the liberty of conscience, &c.— And even [ ] these bounds are expressly and clearly affirmed, we [ ] la-

ment that they do not always prove an effectual safeguard against the power of government; but they are [ ] guard, and why shall we leave our citizens totally [ ]. A gentleman in the Pennsylvania convention, of [ ] reputation, said, that the form of the constitution—the organization of power, if a bill of rights—he had then a defensible, but unformed idea floating in his imagination [ ] however, expressed it inaccurately, and unfortunately [ ] on the wrong side of his own question.[10] A proper organization of power would most probably prevent a violation [ ] bill of rights and prove the best security of political [ ]. Such an organization is nothing more than a good [ ] a mint or die, that will make money in its proper form, [ ] the quantity of alloy must be regulated by law, or the people may be cheated by a debased currency—The truth is, that the rights of individuals are frequently opposed to the apparent interests of the majority—For this reason the greater the portion of political freedom in a form of government the greater the necessity of a bill of rights—often the natural rights of an individual are opposed to the presumed interests or heated passions of a large majority of [ ] democratic government; if these rights are not clearly and expressly ascertained, the individual must be lost; and for the truth of this I appeal to every man who has borne a part in the legislative councils of America. In such government the tyranny of the legislative is most to be dreaded.[11]—In monarchical governments, the feelings of the majority [ ] most frequently on the side of the individual from the [ ] jealousy inseperably attendant on those forms of government, where the tyranny of the executive prevails tyranny whether exercised in the garb of a despot, or [ ] plain coat of a quaker, is equally detestable, and should be guarded against.

If a bill of rights was that essential requisite to a [ ] constitution, 5.1.16
why was it omitted by a convention of the ablest men in America, a large majority of whom were unquestionably well disposed? This has been a natural inequity, and perhaps the true reason yet remains to be disclosed. I have been informed that the proposed constitution was carried through its several stages, in a very inoffensive form to the last, and that it did not assume its decided features until days before the convention rose—the changes then effected produced much difference of opinion—created some [ ] and their patience was too much exhausted to make the necessary correspondent alterations and additions. These [ ] may, I believe, be depended on, but the inference is [ ] offered as conjecture—if true, we may attribute the omission of a bill of rights, and many other imperfections to [ ] rather than design.

From the foregoing observations, many will conclude [ ] I am the 5.1.17
determined foe to the new constitution—I am [ ] its concealed or open enemy—Sorry I am to say [ ] cannot in its present state be its advocate or friend—]] it is as far preferable to the present existing confederation (considered as a national government) as substance is preferable

to form, is a truth I have as little doubt of, as [ ] very numerous defects.—The true and only question is, whether any national government whatever, ought to be [ ] to a league or confederacy administered by a diet, or [ ] congress of diplomatic deputies—And this is a question that [ ] continue to divide the ablest and best men in America [ ] misfortune it, that experience alone will decide a [ ] which perhaps no theory is competent to solve—But that [ ] proposed confederal constitution, cannot be considered [ ] such a diplomatic assembly must appear to all men—It is a national government, and a league between independent States compounded—One of those mixtures of heterogeneous qualities that will forever produce a neutral—a caput mortuum—consequently the present Congress is already found to be, but the *carcase* of a government, and a rotten [ ] too.—The momentous subject has led me farther than I [ ] intended.—My remarks will discover the hurry in which they were written—Had I leisure I would censure freely [ ] in the proposed system, that must be amended, [ ] have strong doubts whether it can be administered in its present form—In doing this I should, I am persuaded, [ ] the public that Aristides has generally erred and frequently mistated in his remarks—that he has done so intentionally [ ] neither believe myself or would wish the public to believe [ ] to err is the common portion of humanity—and to be misinformed the frequent misfortune of ARISTIDES and

A Farmer

II

29 February 1788

5.1.18 A Bill of rights is an useless, if not a dangerous thing; and a standing army, a bugbear, an hobgoblin to freighten children.—This seems to me the doctrine of *Aristides*,[12] and the common language abroad.—What amazing progress in political knowledge have the Americans made in the last ten years! Should they go on improving by such laudable and rapid discoveries, what may we not expect in the course of a few years to come? Nothing less, surely, than a demonstration, that liberty is a visionary phantom, fleeting forever from our embrace—never intended for the possession of mankind, and never existing but in the enthusiastic imaginations of some illustrious madmen.

5.1.19 We talk now with the utmost confidence of our own experience, and an appeal to the history of mankind, is considered as an insult on the sagacity and understanding, of THE CHOICE AND MASTER SPIRITS OF THIS AGE.—[13]

That we are the wisest people under the sun, seems to be no longer disputed, and those whose youthful vanity has been flattered, by a transient public applause, think that because they have come later into the world, they have therefore all the wisdom and experience, of those who have gone before them—This is the opinion of the Americans now.—Machiavelli informs us, that it was the firm persuasion of the Florentines, his countrymen, in his day, and Peter Kolben relates the same thing of the Hottentots when he was amongst them[14]—perhaps the greatest share of confidence is inseperably united with the greatest share of ignorance.

Notwithstanding all this, human nature has always been, and always will continue the same, and so long will it be impossible to put *old* heads upon *young* shoulders.—It is as unnatural to be guided by the experience of others, as for one man to see with another's eyes. This fatal and unalterable law of nature, is founded not less on our presumption and confidence, than on a persuasion, which the young and unexperienced always feel, that there is some peculiar circumstance, that distinguishes their own particular case, from that which a father describes to a son, or an historian to posterity.—Where our vanity is not strong enough to despise, inclination will invent an excuse to avoid the lessons of experience; and where the passions do not entirely command, they are sure to blind the understanding. 5.1.20

Is there one branch of science, literary knowledge, or even art, pleasing or useful to an individual, or society, that has received any improvement from the earliest records of time?—Homer, Theocritus, Pindar and Sophocles are yet unrivalled in poetry.—Thucydides, Polybius and Livy surpass all who have followed them in history.—Demosthenes and Cicero in eloquence.—Socrates, Plato and Plutarch in those moral lessons which form the human heart to virtue.—We penetrate into Grecian forests, and dive into the Tyber to rescue the relics of ancient architecture, painting, sculpture and statuary; and preserve them as the most precious and perfect models of art.—Although, perhaps, gunpowder was unknown, yet they contrived to slaughter men enough without it, and the invention has only put the cowardice of a dastardly slave in uniform, more on a level with the manly exertions of an undisciplined freeman.—The invention of printing, the most important of all modern discoveries, has rather multiplied books than increased knowledge; nor has the discovery of an eighth planet brought with it any remedy for the inclemencies of a cold winter.—Our acquaintance with the skies is as useless as balloons. There is nothing solid or useful that is new—And I will venture to assert, that if every *political institution* is not fully explained by Aristotle, and other ancient writers, yet that, there is no *new* discovery in this the most important of all sciences, for ten centuries back.[15] 5.1.21

Our politicians of an hour, of an empire of a day, boast of government *by representation,* as a most important improvement; and whilst they discant 5.1.22

on its excellencies they do not scruple to assert, that it was unknown to the ancients.*—Some, indeed, have confined it to the British and their descendants.

Government, by representatives, freely chosen by the body of the people, is as old as the history of mankind, and once formed the basis of every European government now existing;[17] but as it is the most liable to corruption, it has always proved of the shortest duration; it has first degenerated into aristocracy, or the government of a few wealthy individuals, and has terminated regularly by a monarchy and standing army.—The reasoning on this progress is not essential at this moment, but as to the antiquity of government by representation, example must be produced to expose an error as general as it is surprizing.

5.1.23 The first legal government of Athens, the most ancient we have any authentic history of, was by Archons elected by the body of the people, first for one and then for five years. Solon divided the legislative from the executive, as we have done, although not exactly in the same form.—This government lasted a very few years, and was destroyed by Pisistratus, assisted by a small standing force.—The examples drawn from several modern governments of Europe will be presently adduced.—

5.1.24 But before this, it is essential that we examine what is meant by *monarchy* and *aristocracy:*—Unhappily for mankind frequent and ridiculous dispute is the least inconvenience arising from the imperfection of language.—Ambiguity and uncertainty of expression admit the imposition of dangerous doctrine, and produce more misfortune than error—Because in the government, from which we separated, the monarchy and aristocracy were attended with certain hereditary names and titles, we are to be compelled to view the *substance* of those powers as inseperable from those *forms* and *titles*.

5.1.25 Formerly the public authority exercised by one person, whether dignified with the title of Emporer, King, Stadtholder, Doge, &c. was elective, and generally revocable—as for instance, the ancient Emperors of Rome; the Emperors of Germany; the Emperor of Russia; the Kings of Denmark and Sweden; the Stadtholder of Holland; Doge of Genoa, &c.—They were seldom entrusted with any *legislative* power.—These various offices and titles, have all become hereditary, and have generally swallowed up the legislative power; except the Doge, who is only the pageant of the day, decorated with the tinsel trappings of authority, but not entrusted with the most trifling portion of its substance. Three great families have established an *hereditary*

*Is it not strange to hear the Governor of Connecticut, gravely asserting in their Convention, the novelty of government by representation, and pinning all his hopes of our future happiness, and exemption from evil on this new discovery! And yet the Governor of Connecticut is not only one of the worthiest of our citizens, but rather of uncommon information in a country, where very few are so independent in their fortunes as to afford much time to study.[16]

despotism over three-fourths of the habitable globe.—The house of HOLSTEIN, who now govern Sweden, Denmark, Norway, Russia, great part of Poland, Germany, and the greatest part of Asia, within two centuries has sprung from a gentleman of less fortune than many Americans now possess.—The house of AUSTRIA, who have usurped the imperial office of Germany, as a patrimony, and govern a great proportion of Europe, are derived, within a few centuries back, from a poor Count of Hapsburg without fortune or honor—And the mighty race of BOURBON, who possess France, Spain, the two Sicilies, two-thirds of America, and extensive dominions in Asia and Africa, sprung not long since from Hugh Capel, who, if he was not the son of a butcher (as is generally believed) was certainly of very low extraction.—There is not a kingdom in Europe, that does not contain many better families than these,—that is families, that have been longer people of property, and produced more illustrious men; but they are all involved in one common fate, reduced to a despicable slavery by these individuals, whose usurpations have been as successful as rapid, and who hold them in trembling subjection by numerous standing armies.—This is the history of MONARCHY divested of its glitter and pomp.

Where *wealth* is hereditary, *power* is hereditary, for *wealth* is *power*— 5.1.26
Titles are of very little, or no consequence—The *rich* are *nobility,* and the *poor plebeans* in all countries—And on this distinction alone, the true definition of aristocracy depends.—An *aristocracy* is that influence of power, which property may have in government; a *democracy* is the power or influence of the people or numbers, as contradistinguished from property. Machiavelli exposes the futility of an attempt to establish an aristocracy, upon any other principles than the solid distinction of property.[18]—In examining the principles of those aristocracies that now exist, we shall find hereditary wealth the only universally pervading principle and characteristic.

In *England* the aristocracy have hereditary titles, and share in the 5.1.27
legislature.—It is preserved by the power of the King to add the most wealthy and able of the commons to this order;—and if that principle, by which George Neville, Duke of Bedford, was degraded from his nobility on account of his poverty, still continued, it would be the most perfect and confirmed aristocracy in the world.—Although this aristocracy is extremely powerful, yet from the happy temperature of the government, by three well constituted estates, it has not proved oppressive; on the contrary, a firm rock, that has preserved this system from every shock of innovation.—Were the other two estates even as perfect as the aristocracy, the government might last forever.

In *Scotland,* the aristocracy have hereditary titles, but they are almost entirely deprived of any share in the legislature, and their power is much broken by the axe and confiscation.

In *Holland,* the aristocracy is composed of the wealthiest.—They hold 5.1.28

their power for life most commonly, though in some instances for a limited time;—and elections are generally, though by no means universally abolished. Their estates are hereditary, but they have no titles.—Such is the aristocracy of America, yet in its infancy, and that of the aristocratic Cantons of Switzerland,—and they are all the most odious, oppressive and abominable aristocratics in the world;—for as their power is exclusively derived from wealth, which is more frequently the reward of iniquity and oppression than merit,—iniquity and oppression will be therefore openly and without shame practised to secure that wealth, which attended by power, defends its possessor from punishment.

5.1.29 In *France* and *Spain*, the aristocracies are decorated with titles, but have no share in the legislature, yet still they are almost as powerful as the former, from their wealth;—but not so oppressive.—This wealth they hold by those fundamental laws which secure the descent of property from ancestors to heirs, on the preservation of which the King's safety, in a great measure, depends.—In fine, in all governments by *representation* or *delegation of power*, where property is secured by fixed and permanent laws, from the rage of the populace on one side, and the tyranny of a despot on the other, the aristocracy will and must rule; that is a number of the wealthiest individuals, and the heads of great families:—The perfection of all political wisdom is so to temper this aristocracy as to prevent oppression.[19]

5.1.30 Between these *two* powers, the aristocracy and democracy, that is the *rich* and *poor*, there is a constant warfare.—Sir William Temple observes, that all the disputes, factions and revolutions in government spring from this source,—that the rich want to keep what they have got, and the poor to take it from them;[20]—this is the favourable side of aristocracy, and is true where numbers unqualified by property have too great a weight in government.—Hence in such States, agrarian laws, and an abolition of debts, are always agitated; but this is only the infancy of government.—So long as the rich, only mean honestly to secure what they have lawfully gained, by their own or the industry of their ancestors, the contest is of short duration, and government, at an early period is so far strengthened as to secure property; but it is then, that the corruption of human nature discovers itself—the more we have, the more we want, and the possession of one object, becomes only the means of attaining another.—The aristocracy who move by system and design, and always under the colourable pretext of securing property, act as has been frequently said like the screw in mechanics, always gaining, holding fast what it gains, and never loosing; and in the event has ever proved an overmatch for the multitude, who never act but from their feelings, and are never permitted to feel *until it is too late;* and whose ineffectual violence, being generally attended by the outrages of despair, involves their cause in odium and horror.[21] Hence it is that unsuccessful popular insurrections have always been succeeded by a general disposition favourable to tyranny.

A great and good man has said, that an aristocracy in their progress to power is the most correct of all governments—after they have attained it, the most corrupt and abominable on earth.[22]—The honest emoluments of office, are too few to gratify the many, who must be interested in administration in order to render it effectual,—they first connive at each other,—bad laws are made,—the good are perverted and avoided,—in fine, oppression becomes general, and the multitude in a paroxism of despair generally conclude, that it is better to suffer the tyranny of one man, than one hundred.[23]

The only remedy the ingenuity of man has discovered for this evil is—a *properly constituted and independent executive*,—a vindex injuriarum—an avenger of public wrongs; who with the assistance of a third estate, may enforce the rigor of equal law on those who are otherwise above the fear of punishment; and who may expose to public view and inquiry, those who screen their peculations under the sanction of office:[24]—How well the new proposed federal or national government, for it is a government of individuals, not of States, has provided for this great end of all government, by uniting the executive with the aristocracy, or senate, tempting the aristocracy with every executive power that can rouse or stimulate their ambition,—and how the executive will be enabled to discharge its duty against those, without whose consent it cannot act, I leave to the sensible and discerning part of my fellow-citizens. A senate should not only be composed of men of ripe age, where the violent passions have quitted the mental field, overcome by the vigor of judgment, but its chief perfection consists in such organization, that content with more than independence and a very respectable situation, they should be cut off from the active exercise of those powers which gratify personal ambition and tend to self aggrandizement or that of their friends, relatives and dependants:—That this feature of the constitution—that this union of the senate and executive will prove fatal to the liberty and happiness of America, unless corrected, I cannot doubt;—as I shall adduce examples of the same form of government, only not quite so bad as ours, terminating in despotism and a standing army, almost as soon as established.—For once let mankind listen to the counsel of experience:—This form of government is not new, it is the same form as that established in Denmark and Sweden, previous to the late revolutions, and exactly such a form as a number of wealthy and well disposed individuals, deliberately set to work, have made, and forever will make, in every age and every clime.—These examples will shew that ruin comes from a quarter entirely unexpected—they will, I hope, entirely disperse the delusion which now misleads our judgments, when we hug ourselves in the security, that we cannot be betrayed by representatives chosen every two years;—let every man, of any property, who has been active in the late revolution, and who is tolerably apprized of the sentiments of the people at large, scrutinize his

5.1.31

own judgment; and let him ask himself whether in even the present disposition of the lower orders of our citizens, who bear with great impatience and reluctance their present inconveniences and incumberances, and those trifling distinctions and pre-eminences, which our present disinterested forms of government afford so trifling, that offices almost go a begging,—if in the event of the proposed plan the burthens of government should be encreased, greater distinctions among citizens arise, and emoluments of office be augmented—Will not the multitude croud with joy to the standard erected by any man in whom they have the least confidence, who will promise them vengeance on those whom they will consider as the authors of all their misfortunes, and to rid them at once of the evils of complicated government and numerous officers, whom they always think they pay, only to plunder them?

5.1.32 To attempt to form a government composed simply of aristocracy and democracy—where rich and poor are jointly to govern—is long of yore represented in the fable of the league between the wolves and sheep—The sheep were soon compelled to recall the shepherd and his dogs.—

5.1.33 But let us here for a moment return to *Aristides*.—He asks, what European power is without a standing army? and which has lost its liberties by them?[25] Many of his remarks betray a misrecollection of the A, B, C, of politics, and some of the historical questions discover a total absence of memory.—It may be answered, that both political and civil liberty have long since ceased to exist in almost all the countries that now employ standing troops, and that their slavery has in every instance been effected and maintained by the instrumentality and invariable obedience of these living machines to their chief.—I grant that the discontent of the people under the oppressions of a complicated aristocratical government has always paved the way to the despotism of one man;—the progress is natural, troops must be raised in such circumstances to compel an unwilling obedience to the laws—these troops must not be part of the discontented—they cannot be trusted—they must not feel like them, and must therefore have separate interests—they must be paid and well paid—they must be admitted to a preference and pre-eminence over those whom they subdue—Here are new taxes and new oppressions, which cause insurrections.—A foreign enemy is expected to take advantage of the confusion; the people are not to be trusted—Your liberties (as they will then be called) must be committed to the guardianship of the standing army—a day which, as I am informed, a member in the late convention declared he wished to see[26]—The people look anxiously for the punishment of their oppressors, and they look up to that man who will gratify their revenge on the aristocracy.—All senates have been, and always will be for raising standing troops, notwithstanding they have invariably found to their destruction, that no oaths can prevent them, from following the fortunes of a favourite leader, whose orders their rigid discipline has accustomed them to obey.—

That this is not the painting of a warm imagination, the history of those governments that were far less complicated and onerous than ours must prove, will evidence—Thirteen complicated forms all under one form of government, still more complicated, seem to bid defiance to all *responsibility*, (the only test of good government) as it can never be discovered where the fault lies—the blame will be shifted from the States to Congress—from Congress to the States—from one State to another, and so from one shoulder to another, until investigation is tired—the burthen of double government complete throughout, when we can scarce support its expence single.—This double officering from front to rear, will prove so extremely burthensome, and above all, this double set of laws will afford so plentiful an harvest of oppression and confusion, that I do not see what right we have to expect a more fortunate fate, than those nations who had happier and fairer prospects. 5.1.34

Let us now view the catastrophes of these governments.—First of *Sweden*—previous to the year 1772—the States or legislature was composed of four orders—I. *Nobility*, who were only as we are informed the heads of the wealthiest families represented in a senate by selection—the old nobility having been almost to a man extirpated by that Nero of the North, Christian IId, who made a general massacre of the order assisted by the populace, who hunted them like bloodhounds—II. The *clergy*—III. The *citizens* chosen by the magistrates and common council of each corporation, their number about 150—IV. The *farmers*, chosen in each district by a majority of voices out of the landholders, their number 180.—It would seem as if theory could hardly invent a more perfect *legislature*.—The *executive* was committed to one man, dignified indeed by the title of King, a word to which we attach ideas unauthorized by its meaning—but this King however (who was elected for life) was in fact, hardly more than a president of the senate, without whose concurrence he could exercise none of the important powers belonging to the executive branch:—Although the King and every officer, civil and military, were sworn to support this constitution, yet there was but one military officer found who regarded this oath, when solicited by Gustavus to take a contrary oath to support its usurpation.—This singular man had the courage to declare, that the Prince ought to have no confidence in him, if he should by one oath violate another.—A few grenadiers with bayonets fixed, ordered to the senate-room, and a very few regiments previously prepared, effected the most sudden and unexpected revolution that ever mankind were the melancholy witnesses of.—A few days after the King published that form of government, which it was his *will and pleasure the Swedes* and *their posterity* should be governed by—The Americans ought to read it—they will find it in William's history of Northern Governments.—In the preface is this remarkable passage: "We, whose names are hereunto subscribed, Senators, States, Counts, Barons, Bishops, Knights, and Nobles, Military Officers, Citizens, and Commons, who are 5.1.35

actually here assembled, make known for us and our *absent* citizens and commons, that many of our citizens under the name of liberty had assumed a power and domination that was insupportable, &c. &c. &c."[27]

5.1.36 In *Denmark*, the revolution in 1666, presents exactly the same story over again.—The constitution was the same as in Sweden precisely, senate, representatives of the people, and an executive elected for life, clogged in the same manner by the senate.—The representatives of the people became at last so tired of the senate, that they made a formal offer of their liberties to Frederick IIId, and actually compelled the senate to give their assent.—This man whose moderation and real disinterested virtue had captivated the affections of all ranks, with the assistance of 24,000 troops, selected chiefly from foreign vagabonds, established the most despotic government, that ever mankind groaned under *for them* and *their posterity*;[28]—and no doubt with the best intentions, as from his declaration we find he believed what Mr. Pope has wrote, and what many good, but mistaken men, both in Europe and America, have thought and now think—

For forms of government let fools contest
That which is best administered, is best.—[29]

and as for the *good* administration he thought he could very well trust that to *himself* and *his posterity*.

5.1.37 It was thus that the hardy descendants of the Goths and Vandals lost their liberties, and from the boldest and most enterprizing they have degenerated into the most miserable and depressed of mankind, the country depopulated, commerce destroyed, dirty minions, and court-favourites plundering every thing and nothing flourishing but the standing army.—For the truth of this picture I refer to William's history.

5.1.38 In *Holland*, at this moment, the standing troops adhering to the Stadtholder (who from the best accounts proved a traitor to his country last war) in conjunction with those bred under that grand Prince of despots, the late King of Prussia, have disarmed the Burghers, the national militia, and are now changing the form of government, under the pretext of throwing power into the hands of the States-General, but actually paving the way for the *hereditary despotism* of William of Nassau.

5.1.39 It is so long since the other States of Europe have lost all semblance of liberty, that it may be difficult to trace their revolutions.—In *France* the oppressions of the aristocracy enabled first the politic Lewis IId, and afterwards Lewis XIIIth, and Cardinal Richlieu, by the assistance of the mob and standing army, since become the standing law of France, to destroy every vestige of freedom.

5.1.40 In *Spain* the immense estates, which by the six fortunate marriages of the house of Austria (as they are called) became concentered in the person of Charles Vth.—The mines of the two Indies then lately discovered which became the property of his family, *and above all* the obstinacy of that hardy, disinterested and frugal priest, Ximenes, finished at a blow the power of the Cortes, who were chiefly composed of representatives elected by the people

in the several States of Old and New Castile, Arragon, Catalonia, &c.—For *Spain* was at that time divided into as many States almost as we are, and perhaps more independent of each other, having separate legislatives and executives, and *the general power not entrusted with the right of taxation.*—However, a standing army has from that time destroyed all hopes of a revolution in favour of the rights of mankind.

It will be asked how has *England* preserved her liberties, with at least an apparent standing army?—I answer, she did loose them; but as there was no standing army until lately, she regained them again:—She lost them under the Tudors, who broke the then oppressive power of the aristocracy, but the unparalleled avarice of Henry VIIth, the boundless extravagance of Henry VIIIth, the short reign of Edward VIth, (which was but the sickly blaze of a dying candle) the bigotry of that weak woman Mary, who had no other object than religious persecution, and lastly the parsimony of Elizabeth, who had no children of her own to provide for, and who hated her legal successor and his family—all conspired to prevent their establishing a military standing force, sufficient to secure their usurpations; and the nation recovered from their paroxism under the Stuarts, who were too weak and too wicked to command even respect, notwithstanding their dignity.—On the revolution in 1688, the patriots of that day formed some glorious bulwarks, which seem as yet to have secured them from the evils and danger of their present standing army, though still in my opinion, they hold their remaining liberties by a very precarious tenure indeed, as the first enterprizing and popular Prince will most probably convince them. 5.1.41

Let us now examine these defences and compare them with those of the proposed constitution. 5.1.42

In *England,*[30] by their bill of rights, a standing army is declared to be contrary to their constitution, and a militia the only natural and safe defence of a free people—This keeps the jealousy of the nation constantly awake, and has proved the foundation of all the other checks.

In the American constitution, there is no such declaration, or check at all.

In *England,* the military are declared by their constitution to be in *all* cases subordinate to the civil power; and consequently the civil officers have always been active in supporting this pre-eminence.

In the American constitution, there is no such declaration.

In *England,* the mutiny bill can only be passed from year to year, or on its expiration every soldier is as free, and the equal by law of the first general officer of the land. 5.1.43

In *America,* the articles of war (which is the same thing) has been already considered as *perpetual* (as I am well informed) under even the present Congress, although the constitutions of all the States positively forbid any standing troops at all, much less laws for them.

In *England,* the appropriation of money for the support of their army must be from year to year; in America it may be for double the period.

How favorable is this contrast to Britain—that Britain which we lavished

our blood and treasure to separate ourselves from, as a country of slavery—But we then held different sentiments from those now become so fashionable; for this I appeal to the constitutions of the several States.

5.1.44 In the declaration of rights of *Massachusetts*, sect. 17.—The people have a right to keep and to bear arms for the common defence And as in time of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature, and the military power shall always be held in exact subordination to the civil authority, and be governed by it.

Sect. 27. In time of peace, no soldier ought to be quartered in any house without the consent of the owner; and in time of war, such quarters ought not to be made but by the civil magistrate, in a manner ordained by the legislature.

Declaration of rights of *Pennsylvania*, sect. 13.—That the people have a right to bear arms for the defence of themselves and the State; and as standing armies in the time of peace, are dangerous to liberty, they ought not to be kept up: And that the military should be kept under strict subordination to, and governed by the civil power.

Declaration of rights of *Maryland*, sect. 25.—That a well regulated militia is the proper and natural defence of a free government.

Sect. 26. That standing armies are dangerous to liberty, and ought not to be raised or kept without consent of the legislature.

Sect. 27. That in all cases and at all times the military ought to be under strict subordination to, and controul of the civil power.

Sect. 28. That no soldier ought to be quartered in any house in time of peace, without the consent of the owner; and in time of war, in such manner only as the legislature shall direct.

Declaration of rights of *Delaware*, in the same words as *Maryland*.

Declaration of rights of *North-Carolina*, sect. 17.—That the people have a right to bear arms for the defence of the State; and as standing armies in time of peace are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to, and governed by the civil power.

Constitution of *South-Carolina*, sect. 42.—That the military be subordinate to the civil power of the State.

5.1.45 But we are told by *Aristides*, that our poverty is our best security against many standing troops.[31]—Are *we then, and our posterity*, always to be poor? This security would certainly cease with our poverty; but the truth is, our poverty instead of preventing will be the first cause of the increase of a standing army.—Our poverty will render the people less able to pay the few troops it is admitted we must keep.—This expence added to the immense public and private debts, which an efficient government seems to be requisite to enforce payment of, together with the onerous and complicated civil governments, both Continental and State, will be productive of future un-

easiness and discontent.—The most sanguine among us must expect some turbulence and commotion; let the smallest appearance of commotion peep out again in any part of the Continent, and there is not a rich man in the United States, who will think himself or his property safe, until *both* are surrounded with standing troops. This is the only public purpose for which *these* men ever did, or ever will willingly contribute their money. But then, according to their laudable custom, they must have interest for their advances;—this increases the public burthens—Commotion is followed by commotion, until the spirit of the people is broken and sunk by the halter, the scaffold, and a regular standing army.—

Yet notwithstanding this I am as sensible as *Aristides*, that a few troops 5.1.46
will be necessary for the United States, for those very services which he says it would be oppressive to a free people constantly to execute.—The western territory, some guards, arsenals and posts whenever our finances will admit our attention to that safe and honorable defence, a navy—will require a few men in constant pay. But it is this necessity that alone causes all my apprehension. There is no public *abuse* that does not spring from the necessary *use* of power,—it is that insensible progress from the *use* to the *abuse*, that has led mankind through scenes of calamity and woe, that make us now shrink back with horror, from the history of our species. Do we not see at this moment, that even the present Congress have been compelled by *necessity* to embody and maintain troops *in time of peace* for these purposes; and yet the raising or maintaining one man is as complete a violation of the bill of rights of the several States, as the raising 100,000.—This necessary infraction of the only check that existed, has already caught all America to view the approach of a standing army, with composure and indifference, nay when a limitation of the evil is proposed, *Aristides* asks without hesitation—how shall we distinguish between *peace* and a *threatened war?* Shall we not be surprized, unprepared?

I must confess that from the vigor and resolution with which we began the 5.1.47
erection of these our fabrics of freedom, I was persuaded that the grave would have closed on my bones, before this question would be publicly proposed in America.—Are we then to look up to a standing army for the defence of this soil from foreign invasion? Have we forgot that a few freemen of Sparta defended their country against a million of Persian slaves? Have not an handful of free Swiss farmers, defended their country against the numerous veteran armies, which Burgandy, Austria and Bourbon have led against them? They beat them among their rocks, and then descended into the plains and beat them, and they will beat them forever on any ground, to all eternity, whilst they remain free and are defending that freedom.—Did it not cost the Spaniards more time and blood to subdue a few republican unarmed Indians, on the little island of Gran Canaria, than they expended in the destruction of the mighty empires of Mexico and Peru,

defended by numerous standing armies? Did their arms meet with any resistance on this Continent, until they penetrated to the free republics of Chili?—I had rather trust the defence of a country to the savage valour of a few Shawnesse and Delawares, who live in freedom and value the blessing, than to the numerous hosts of civilized slaves that surround the thrones of Delhi, Pekin and Ispahan—But a few years have elapsed since that feather of a King, Lewis XIVth, overrun all Holland in a few days, and became master, almost without resistance, of that country which the veteran infantry of Spain, led by the most celebrated Captains, an age of chivalry produced, Alva, Alexander Farneza, and the Marquis Spinola, were forced to gain inch by inch, from a few desperate Burghers. When the French troops came, the people were universally discontented with the oppressions of the rich, as soon as they had reeked a brutal vengeance on the aristocracy, the latent courage of the nation revived, and Lewis was obliged to scamper off as fast as he came.—Let the body of the people be interested in the defence of a *good* government, and my countrymen need not fear being surprized by all the slaves and brutes that the despots of the old and new world can arm against them.—There will then need no distinction of a threatened war, and our establishment may at all times be limited to the purposes just mentioned.—

5.1.48 But perhaps standing troops may be wanted to suppress *domestic* insurrections? The people cannot be trusted to [ ] the people, is becoming a cant expression; but I fervently hope by no means a general sentiment. I am free to declare, that I never wish to see any measure of government enforced by arms, which the yeomanry of the United States will not turn out to support.

5.1.49 My countrymen! never forget this truth, which the sad experience of your fellow-mortals has witnessed with their blood!—Remember it yourselves!—Engrave it on the tender minds of your children, as the first article of their political creed—that, *There is no form of government safe with a standing army, and there is none that is not safe without.*—A people may frequently be so unfortunate as to loose their liberties. They may be so foolish as to give them away, as in Denmark, where not only the senators and representatives of the people, but also every man in the whole empire of the smallest note, or consequence, signed a formal surrender of their liberties on an instrument now kept in the archives of that kingdom—an everlasting monument of—*how catching a thing this signing of names is;* or of what is now called—*a modest deference for the opinion of others.* But whether they loose them, or give them away, they will soon regain them, or resume them, unless they are prevented by a *standing army*—And also recollect, my fellow-citizens, *That what is doctrine to day, may be treason to-morrow.*

A Farmer.

III
7 March 1788

There are but two modes by which men are connected in society, the one which operates on individuals, this always has been, and ought still to be called, *national government;* the other which binds States and governments together (not corporations, for there is no considerable nation on earth, despotic, monarchical, or republican, that does not contain many subordinate corporations with various constitutions) this last has heretofore been denominated a *league or confederacy*.—The term *fœderalists* is therefore improperly applied to themselves, by the friends and supporters of the proposed constitution.—This abuse of language does not help the cause,—every degree of imposition serves only to irritate, but can never convince.—They are *national men*, and their opponents, or at least a great majority of them, are *fœderal*, in the only true and strict sense of the word.—[32] 5.1.50

Whether any form of *national* government is preferable for the Americans, to a league or confederacy, is a previous question we must first make up our minds upon.—There will then remain still another—Whether, if any, is the one proposed the best, in our circumstances safe, and such a one as we should *unconditionally* receive? and if ever duty required deliberation before decision, it calls for it now, and in terms too strong to be resisted or evaded.—Let the light come in *free* from every quarter. If reason cannot satisfy, experiment will determine. But even then, is it not the duty of those to whom the happiness of so great a proportion of the human species is entrusted, to conduct that experiment with the utmost coolness and fairness, with all those precautions which the wisdom of antiquity affords, and finally qualified with those securities to our liberty, that, should it prove oppressive or impracticable, ourselves, or at least our posterity, may not be prevented, by the power or influence of a civil or *military oligarchy*, from adopting the alternative? 5.1.51

The advantages or disadvantages of *national government*, open too wide a field of discussion for my leisure or talents.—Some few remarks I shall cursorily offer. That a *national government* will add to the dignity and encrease the splendour of the United States abroad, can admit of no doubt: It is essentially requisite for both. That it will render government, and officers of government, more dignified at home is equally certain. That these objects are more suited to the manners, if not genius and disposition of our people is, I fear, also true. That it is requisite in order to keep us at peace among ourselves, is doubtful. That it is necessary, to prevent foreigners from dividing us, or interfering in our government, I deny positively; and after all, I have strong doubts whether all its advantages are not more *specious* than *solid*.—We are vain, like other nations,—we wish to make a 5.1.52

noise in the world; and feel hurt that Europeans are not so attentive to America in *peace,* as they were to America in *war.* We are also, no doubt, desirous of cutting a figure in history.—Should we not reflect, that quiet is happiness?—That content and pomp are incompatible?—I have either read or heard this truth, which Americans should never forget,—*That the silence of historians is the surest record of the happiness of a people.*—[33]The Swiss have been four hundred years the envy of mankind, and there is yet scarcely an history of their nation. What is history, but a disgusting and painful detail of the butcheries of conquerors, and the woeful calamities of the conquered? Many of us are proud, and are frequently disappointed that office confers neither respect or difference. No man of merit can ever be disgraced by office. A rogue in office may be feared in *some* governments—he will be respected in *none.*—After all, what we call respect and difference only arise from contrast of situation, as most of our ideas come by comparison and relation. Where the people are free there can be no great contrast, or distinction among *honest* citizens *in* or *out* of office.—In proportion as the people loose their freedom, every gradation of distinction, between the *Governors* and *governed* obtains, until the former become *masters,* and the latter become *slaves.* In all governments virtue will command reverence.—The divine Cato knew every Roman citizen by name, and never assumed any pre-eminence; yet Cato found, and his memory will find, respect and reverence in the bosoms of mankind, until this world returns into that nothing, from whence Omnipotence called it.—That the people are not at present disposed for, and are actually incapable of, governments of simplicity and equal rights, I can no longer doubt—But whose fault is it? We make them bad, by bad governments, and then abuse and despise them for being so. Our people are capable of being made any thing, that human nature was or is capable of, if we would only have a little patience and give them good and wholesome institutions; but I see none such and very little prospect of such.—Alas! I see nothing in my fellow-citizens, that will permit my still fostering the delusion, that they are now capable of sustaining the weight of SELF-GOVERNMENT:[34] A burthen to which Greek and Roman shoulders proved unequal.—The honor of supporting the dignity of the human character, seems reserved to the hardy Helvetians alone.—If the body of the people will not govern themselves, and govern themselves *well too,* the consequence is unavoidable.—A FEW will, and must govern *them.*—Then it is that government becomes truly a government by *force* only,—where men *relinquish part* of their natural rights to secure the *rest,* instead of an union of will and force, to protect *all* their natural rights, which ought to be the foundation of every rightful social compact.—Whether *national* government will be productive of internal peace, is too uncertain to admit of decided opinion.—I only hazard a conjecture when I say, that our state disputes, *in a confederacy,* would be disputes of levity and passion, which would subside before injury.—The people being free, government

having no right to them, but they to government, they would separate and divide as interest or inclination prompted—as they do at this day, and always have done, in Switzerland—In a *national* government, unless cautiously and fortunately administered, and disputes will be the deep-rooted differences of interest, where part of the empire must be injured by the operation of general law; and then should the sword of government be once drawn (which Heaven avert) I fear it will not be sheathed, until we have waded through that series of desolation, which France, Spain, and the other great kingdoms of the world have suffered, in order to bring so many separate States into uniformity, of government and law; in which event the legislative power can only be entrusted to one man (as it is with them) who can have no *local attachments, partial interests,* or *private views* to gratify.[35]

That a *national* government will prevent the influence or danger of foreign intrigue, or secure us from invasion, is in my judgment directly the reverse of the truth:—The only *foreign,* or at *least evil foreign influence,* must be obtained through corruption.—Where the government is lodged in the body of the people, as in Switzerland, they can never be corrupted; for no prince, or people, can have resources enough to corrupt, the *majority of a nation;*—and if they could, the play is not worth the candle.—The facility of corruption is encreased in proportion as power tends by representation or delegation, to a concentration in the *hands of a few*.—The French have kept a minister in Switzerland for 300 years back to persuade them to place power in their general Assembly or Diet.—The Swiss have always proved faithful allies and friends to France,—but have laughed at her political advice—as the assembly of Foxes treated with derision the curtailed Reynard—who advised them to part with their cumbersome quantity of brush.—As to any nation attacking a number of confederated independent republics, who are always as populous as brave, it is not to be expected, more especially as the wealth of the empire is there universally diffused, and will not be collected into any one overgrown, luxurious and effeminate capital to become a lure to the enterprizing ambitious.—That extensive empire is a misfortune to be deprecated, will not now be disputed.—The balance of power has long engaged the attention of all the European world, in order to avoid the horrid evils of a general government.[36]—The same government pervading a vast extent of territory, terrifies the minds of individuals into meanness and submission.—All human authority, however organized, must have confined limits,—or insolence and oppression will prove the offspring of its grandeur,—and the difficulty or rather impossibility of escape prevents resistance.—Gibbon relates that some Roman Knights who had offended government in Rome were taken up in Asia, in a very few days after.—It was the extensive territory of the Roman republic that produced a Sylla, a Marius, a Caligula, a Nero, and an Eliagabalus.—In small independent States continguous to each other, the people run away and leave

5.1.53

despotism, to reek its vengeance on itself; and thus it is that moderation becomes with them, the law of self-preservation.[37]—These and such reasons founded on the eternal and immutable nature of things have long caused and will continue to cause much difference of sentiment throughout our wide extensive territories—From our divided and dispersed situation, and from the natural moderation of the American character, it has hitherto proved a warfare of argument and reason.

A Farmer.

(*To be continued.*)

18 March 1788

(*Continued from No.* 357.)

5.1.54 Thus it was that the opposite qualities of the first confederation were rather caused by than the cause of two parties, which from its first existence began and have continued their operations, I believe, unknown to their country and almost unknown to themselves—as really but few men have the capacity or resolution, to develope the secret causes, which influence their daily conduct.—The old Congress was a national government and an union of States, both brought into one political body[;] as these opposite powers, I do not mean parties, were so exactly blended and very nearly balanced, like every artificial, operative machine where action is equal to re-action—it stood perfectly still—it would not move at all—Those who were merely confoederal in their views, were for dividing the public debt—those who were for national government, were for encreasing of it—Those who thought any national government would be destructive to the liberties of America, as I imagine, assisted those who thought it our only safety, to put every thing as wrong as possible.—Requisitions were made, which every body knew it was impossible to comply with—either in 82 or 83, ten millions of hard dollars, if not thirteen, were called into the continental treasury, when there could not be half that sum in the whole tract of territory between Nova-Scotia and Florida—The States neglected them in despair—The public honor was tarnished, and our governments abused by their servants and best friends—In fine, it became a cant word—things are not yet bad enough to mend—However, as great part of the important objects of society were entrusted to this mongrel species of general government, the sentiment of pushing it forward became general throughout America, and the late Convention met at Philadelphia under the uniform impression, that such was the desire of their constituents—But even then the advantages and disadvantages of national government operated so strongly, although silently,

on each individual, that the conflict was nearly equal—A third or middle opinion, which always arises in such cases, broke off and took the lead—the national party assisted, pursued steadily their object—the foederal party dropt off, one by one, and finally, when the middle party came to view the offspring which they had given birth to, and in a great measure reared, several of them immediately disowned the child—Such has been hitherto the progress of party, or rather of the human mind dispassionately contemplating our separate and relative situation, and aiming at that perfect completion of social happiness and grandeur, which perhaps can be combined only in idea—Every description of men entertain the same wishes (excepting perhaps a few very bad men of each)—they forever will differ about the mode of accomplishment—and some must be permitted to doubt the practibility.

As our citizens are now apprized of the progress of parties or political opinions on the continent, it is fit they should also be informed of the present state, force and designs of each, in order that they may form their decisions with safety to the public and themselves—this shall be given with all the precision and impartiality the author is capable of. 5.1.55

America is at present divided into three classes or descriptions of men, and in a few years there will be but two. 5.1.56

The first class comprehends all those men of fortune and reputation who stepped forward in the late revolution, from opposition to the administration, rather than the government of Great-Britain—All those aristocrats whose pride disdains equal law—Many men of very large fortune, who entertain real or imaginary fears for the security of property—Those young men, who have sacrificed their time and their talents to public service, without any prospect of an adequate pecuniary or honorary reward—All you people of fashion and pleasure who are corrupted by the dissipation of the French, English and American armies; and a love of European manners and luxury—The public creditors of the continent, whose interest has been heretofore sacrificed by their friends, in order to retain their services on this occasion—A large majority of the mercantile people, which is at present a very unformed and consequently dangerous interest—Our old native merchants have been almost universally ruined by the receipt of their debts in paper during the war, and the payment in hard money of what they owed their British correspondents since peace—Those who are not bankrupts, have generally retired and given place to a set of young men, who conducting themselves as rashly as ignorantly, have embarrassed their affairs and lay the blame on the government, and who are really unacquainted with the true mercantile interest of the country—which is perplexed from circumstances rather temporary than permanent—The foreign merchants are generally not to be trusted with influence in our government—they are most of them birds of passage—some perhaps British emissaries encreasing and rejoicing in our political mistakes, and even those who have settled among

us with an intention to fix themselves and their posterity in our soil, have brought with them more foreign prejudices, than wealth—time must elapse before the mercantile interest will be so organized as to govern themselves, much less others, with propriety: And lastly, to this class I suppose we may ultimately add the *tory interest* with the exception of very many respectable characters, who reflect with a gratification mixed with disdain, that those principles are now become fashionable for which they have been persecuted and hunted down—which, although by no means so formidable as is generally imagined, is still considerable—They are at present wavering—they are generally, though with very many exceptions, openly for the proposed, but secretly against any American government—*A burnt child dreads the fire*—but should they see any fair prospect of confusion arise, these gentry will be off at any moment for these five and twenty years to come—Ultimately should the administration promise stability to the new government, they may be counted on as the Janizaries of power, ready to efface all suspicion by the violence of their zeal—In general, all these various people would prefer a government, as nearly copied after that of Great-Britain, as our circumstances will permit—some would strain these circumstances—others still retain a deep rooted jealousy of the executive branch and strong republican prejudices as they are called—finally, this class contains more aggregate wisdom and moral virtue than both the other two together—it commands nearly two-thirds of the property and almost one half the numbers of America, and has at present, become almost irresistible from the name of the truly great and amiable man who it has been said, is disposed to patronize it, and from the influence which it has over the second class—This class is nearly at the height of their power, they must decline or moderate, or another revolution will ensue, for the opinion of America is becoming daily more unfavorable to those radical changes which high-toned government requires:—A conflict would terminate in the destruction of this class, or the liberties of their country—May the Guardian Angel of America prevent both!

5.1.57 The second class is composed of those descriptions of men who are certainly more numerous with us than in any other part of the globe—*First, those men* who are so wise as to discover that their ancestors and indeed all the rest of mankind were and are fools. We have a vast over proportion of these great men, who, when you tell them that from the earliest period at which mankind devoted their attention to social happiness, it has been their uniform judgment, that a government over governments cannot exist—*that is two governments* operating on the same individual—assume the smile of confidence and tell you of two people travelling the same road—of a perfect and precise division of the duties of the individual: Still however, the political apothegm is as old as the proverb—*That no man can serve two masters*, and whoever will run their noddles against old proverbs will be sure to break them, however hard they may be, and if they broke only their own, all

would be right; but it is very horrible to reflect that all our numskulls must be cracked in concert.—*Second*—The *trimmers* who from sympathetic indecision are always united with, and when not regularly employed, always fight under the banners of these great men. These people are forever at market and when parties are nearly equally divided, they get very well paid for their services. *Thirdly*—The *indolent*, that is almost every second man of independent fortune you meet with in America—*these are quite easy, and can live under any government*. If men can be said to live, who scarcely breathe, and if breathing was attended with any bodily exertion, would give up their small portion of life in despair. These men do not swim with the stream as the trimmers do, but are dragged like mud at the bottom. As they have no other weight than their fat flesh, they are hardly worth mentioning when we speak of the sentiments and opinions of America. As this second class never can include any of the yeomanry of the union, who never affect superior wisdom, and can have no interest but the public good, it can be only said to exist at the birth of government, and as soon as the first and third classes become more decided in their views, this will divide with each and dissipate like a mist, or sink down into what are called moderate men, and become the tools and instruments of others. These people are prevented by a cloud from having *any* view; and if they are not virtuous, they at least preserve the appearance which in this world amounts to the same thing.

At the head of the third class appear the old rigid republicans, who 5.1.58
although few in number, are still formidable—Reverence will follow these men in spite of detraction, as long as wisdom and virtue are esteemed among mankind—they are joined by the true *democrats*, who are in general fanatics and enthusiasts, and some few sensible, charming madmen—a decided majority of the *yeomanry* of America will, for a length of years, be ready to support these two descriptions of men; but as this last class is forced to act as a residuary legatee, and receive all the trash and filth—it is in some measure disgraced and its influence weakened, by 3dly, the free-booters[38] and plunderers, who infest all countries and ours perhaps as little as any other whatever—these men have that natural antipathy to any kind or sort of government, that a rogue has to a halter. In number they are few indeed—such characters are the offspring of dissipation and want, and there is not that country in the world where so much real property is shared so equally among so few citizens, or where property is as easily acquired by fair means, very few indeed will resort to foul. Lastly, by the poor mob, infoelix pecus! the property of whoever will feed them and take care of them—let them be spared—let the burthen of taxation sit lightly on their shoulders, but alas! this is not their fate—it is here that government forever falls with all its weight—it is here that the proposed government will press where it should scarcely be felt.—

Oves bis mulget in hora, et succus pecori et lac subducitur agnis.[39]

If ever a direct tax is laid by the general government, it must, if not from 5.1.59

necessity, at least from propriety, be laid on polls—it is the only one I believe to be practicable—there ought then to be some security that they avoid direct taxation where not absolutely indispensible, and some better security than the opinion of *Aristides*.

5.1.60 In this class may be counted men of the greatest mental powers and of as sublime virtue as any in America—they at present command nearly one-third of the property and above half the numbers of the United States, and in either event [, adoption of the Constitution or not,] they must continue to encrease in influence by great desertions from both the other classes[:]—If the government is adopted, [they will increase] by the numerous, discontented and disappointed, and from that natural jealousy, which Englishmen and their descendants always will retain, of their government and Governors. If the government is not adopted theirs will be the prevalent opinion. The object of this class either is or will be purely fœderal—an union of independent States, not a government of individuals: And should the proposed fœderal plan fail, from the obstinancy of those who will listen to no *conditional* amendments, although such as they cannot disapprove; or should it ultimately in its execution upon a fair trial, disappoint the wishes and expectations of our country: An union purely fœderal is what the reasonable and dispationate patriots of America must bend their views to. My countrymen, preserve your jealousy—reject suspicion, it is the fiend that destroys public and private happiness. I know some weak, but very few if any wicked men in public confidence; and *learn* this most difficult and necessary lesson:—That on the preservation of parties, public liberty depends. Whenever men are unanimous on great public questions, whenever there is but one party, freedom ceases and despotism commences. The object of a free and wise people should be so to balance parties, that *from the weakness of all you may be governed by the moderation of the combined judgments of the whole, not tyranized ever by the blind passions of a few individuals*.[40]

A Farmer.

IV
21 March 1788

5.1.61 I have said that the boasted birthright of Englishmen and their posterity—*the trial by jury in civil cases*, is destroyed under the proposed fœderal constitution; that the hope of its re-establishment by the future Congress is at best doubtful; that its tenure, depending on the fluctuating breath of annual or biennial sessions, is uncertain; and finally, I denied the power of reviving it by a *Congressional law* at all, as it would be a violation of the

constitution:[41]—It may be expected that in a cause like this, assertion and proof should go, hand in hand.

5.1.62 It has ever been contended, at least on one side, that the proposed Congress are to exercise *no power not expressly vested in them by the fœderal plan*. This is the position of *Aristides*, and of all the friends of the system.—It is now asked, is the power of establishing juries in *civil* cases by Congress, given in that constitution? It must be answered NO, not at least in express words.—Is it then given by *implication?* If so great an authority can be taken from the judges, the judiciary, an independent branch of government, by the legislature, and vested in a distinct branch, a jury, I do not see in what *judiciary independence* consists.—Can these judical powers, vested in the judges, by the constitution, which gives *them* the cognizance of certain causes, be divested by an *implied* legislative power? If we imply this power, may we not imply any other? And does not the doctrine of *implication* totally defeat the fundamental position of *Aristides*, and the friends of the *new* government? But moreover does not *Aristides*, and every lawyer, know that in the interpretation of all political as well as civil laws, this fundamental maxim must be observed, *That where there are two objects in contemplation of any legislature, the express adoption of one, is the total exclusion of the other;* and that the adoption of juries in *criminal* cases, in every legal interpretation, amounts to an absolute rejection in *civil* cases:—If the right of establishing juries, by a *Congressional* law is admitted at all, it must be admitted, as an *inherent legislative right*, paramount to the constitution, as it is not derived from it, and then the power that can make, can by law unmake; so that referring this power to a source of authority *superior* to the act of government, would leave us without any juries at all (even in *criminal* cases) if Congress should so please; which position can never be the object of either friends or enemies to the system at present.—If it is defective, it is still bad policy to make it worse; but still in every view, we must reflect, that the establishment of trials by jury, belongs to *political*, not to *civil* legislation. It includes the right of organizing government, not of regulating the conduct of individuals, as the following enquiry will prove; we must never give an assembly the power of giving itself power.

5.1.63 As the worth and excellence of this mode of trial, preserved and handed down from generation to generation for near two thousand years, has drawn down the enthusiastic encomiums of the most enlightened lawyers and statesmen of every age; as it has taken deep root in the breast of every freeman, encompassed by the defences of affection and veneration, a repetition of its praises would be as tedious as useless: Some remarks however, still remain to be made, which will place this subject in a more important and conspicuous view.

5.1.64 The trial by jury, is the only remaining power which the Commons of England have retained in their own hands, of all that plentitude of authority and freedom, which rendered their northern progenitors irresistible in war,

and flourishing in peace.—The usurpations of *the few,* gradually effected by artifice and force, have robbed *the many,* of that power which once formed the basis of those governments, so celebrated by mankind.—The government of Sparta, the form of which, it is said, has continued from the days of Lycurgus to our age, preserving its model amidst those overwhelming tides of revolution and shipwrecks of governments, which Greece has sustained for near three thousand years; the same form of government among the Saxons and other Germans, consisting of King, Lords and Commons, applauded by Tacitus and Machiavelli, were thus distinguished from the present government of England—The power of the Commons resided with them, not in representatives but in the body of the people.—*De minoribus rebus, principes consultant; de majoribus omnes,* are either the words of Tacitus or Caesar.[42] The administration of *ordinary* affairs was committed to the select men; but all important subjects were deliberated on by the whole body of the people.—Such was the constitution of Sparta, and of England, when Machiavelli gives them as a model, for there can be no doubt but that the *folk-motes* of the Saxons were not formed by representation—The venerable remembrance of which assemblies, hung long about the affections of Englishmen, and it was to restore them that they offered such frequent libations of their noblest blood; but the usurpations of *the few* have been unwearied and irresistible, and the trial by jury is all that now remains to *the many.*

5.1.65 *The trial by jury is—the democratic branch of the judiciary power*—more necessary than representatives in the legislature; for those usurpations, which silently undermine the spirit of liberty, under the sanction of law, are more dangerous than direct and open legislative attacks; in the one case the treason is never discovered until liberty, and with it the power of defence is lost; the other is an open summons to arms, and then if the people will not defend their rights, they do not deserve to enjoy them.

5.1.66 The *judiciary* power, has generally been considered as a *branch* of the *executive,* because these two powers, have been so frequently united;—but where united, there is no liberty.—In every *free* State, the judiciary is kept separate, independent, and considered as an intermediate power;—and it certainly partakes more of a *legislative,* than an *executive* nature—The sound definition which Delolme applied to one branch may be justly extended to the whole judiciary.—*That it is a subordinate legislation in most instances, supplying by analogy, and precedent in each particular case, the defects of general legislative acts,*[43]—[W]ithout then the check of the *democratic* branch—*the jury,* to ascertain those facts, to which the judge is to apply the law, and even in many cases to determine the cause by a *general* verdict—the latitude of judicial power, combined with the various and uncertain nature of evidence, will render it impossible to convict a judge of corruption, and ascertain his guilt.—Remove the fear of punishment, give hopes of impunity, and vice and tyranny come scowling from their dark

abodes in the human heart.—Destroy juries and every thing is prostrated to judges, who may easily disguise law, by suppressing and varying fact:—Whenever therefore the trial by juries has been abolished, the liberties of the people were soon lost—The judiciary power is immediately absorbed, or placed under the direction of the executive, as example teaches in most of the States of Europe.—So formidable an engine of power, defended only by the gown and the robe, is soon seized and engrossed by the power that weilds the sword.—Thus we find the judiciary and executive branches united, or the *former* totally dependent on the *latter* in most of the governments in the world.—It is true, where the judges will put on the sword and weild it with success, they will subject both princes and legislature to their despotism, as was the case in the memorable usurpation of the Justizia of Arragon, where the judiciary erected themselves into a frightful tyranny.

Why then shall we risque this important check to judiciary usurpation, provided by the wisdom of antiquity? Why shall we rob the Commons of the only remaining power they have been able to preserve, for their personal exercise? Have they ever abused it?—I know it has and will be said—they have—that they are too ignorant—that they cannot distinguish between right and wrong—that decisions on property are submitted to chance; and that the last word, commonly determines the cause:—There is some truth in these allegations—but whence comes it—The Commons are much degraded in the powers of the mind:—They were deprived of the use of understanding, when they were robbed of the power of employing it.—Men no longer cultivate, what is no longer useful,—should every opportunity be taken away, of exercising their reason, you will reduce them to that state of mental baseness, in which they appear in nine-tenths of this globe—distinguished from brutes, only by form and the articulation of sound—*Give them power and they will find understanding to use it*—But taking juries with all their real and attributed defects, is it not better to submit a cause to an impartial tribunal, who would at least, as soon do you right as wrong—than for every man to become subservient to government and those in power?—Would any man oppose government, where his property would be wholly at the mercy and decision of those that govern?—We know the influence that property has over the minds of men—they will risque their lives rather than their property; and a government, where there is no trial by jury, has an unlimited command over every man who has any thing to loose.—It is by the attacks on private property through the judiciary, that despotism becomes as irresistible as terrible. I could relate numerous examples of the greatest and best men in all countries, who have been driven to despair, by vexatious lawsuits, commenced at the instigation of the court, of favorites and of minions, and all *from the loss of juries*.—France was reduced to the brink of destruction in one instance.—The Queen mother Louise of Savoy, piqued at the constable of Bourbon, a young and amiable man, who refused to marry her, commenced a suit against him for all his estate—The judges were ready at

5.1.67

the beck of the court, and without a shadow of justice deprived him by law of every shilling he was worth; and drove from this country an unfortunate hero, whose mad revenge carried desolation into her bosom.—In Denmark a despicable minion, who came in rags to the court, after the establishment of their new government, which they solicited Frederick the IIId to make for them, acquired an immense fortune by plunder, sheltered by the favour of the Sovereign. At last he fixed his eyes on a most delightful estate, and offered to buy it—The owner did not want money, and could not think of selling the patrimony of an ancient family; this wretch then spirited up law-suits against him, and after the most cruel vexations obliged him to sell the estate for much less than he at first offered him. This unfortunate gentleman was driven from the country which gave him birth, and a once happy society of relations and friends.—Such would have been the fate of England, from those courts without juries, which took cognizance of causes arising in the revenues and imports in Charles the first's time, the court fortunately for the liberties of England, seized the bull by the horns, when they attacked that wonderful man John Hampden. He spent 20,000 *l.* rather than pay an illegal tax of twenty shillings, brought the cause before the Parliament, roused the spirit of the nation, and finally overturned courts, King, and even the constitution for many years. These dreadful examples may teach us the importance of juries in *civil* cases—they may recal to my countrymen a maxim which their ancestors, as wise, and more virtuous than their posterity, held ever in view—*That if the people creep like tortoises, they will still find themselves too fast in giving away power.*

A Farmer

V
25 March 1788

5.1.68 I have been long since firmly persuaded, that there are no hidden sources of moral agency beyond the reach of investigation.—The all-wise and all-bountiful Author of Nature, could never have created *human reason* unequal to the happy regulation of *human conduct*.—The errors and misfortunes of mankind spring from obvious sources. Religious and political prejudices, formed by education, strengthened by habit, maintained by interest, and consecrated by fear, are forever arming the passions against the judgment.—The celebrated Blaise Pascal (the powers of whose understanding were rather miraculous than surprizing) closed his painful researches after religious truth, with this dogma, as pernicious as untrue,—"*That a religion purely spiritual, was never intended for mankind.*"[44] There could be no judgment more unbiassed, for there was no mind so strong, no

heart more pure; but bred in the bosom of the church, even her idolatry impressed him with veneration and awe. Notwithstanding his conclusion, the doctrines of Calvin maintain their ground in their primitive simplicity, divested of the aid of ceremony and form. The thunders of the Vatican, which for ages deluged Europe with blood, have dissipated their force, and reason has resumed her spiritual empire. Would to God, that the history of temporal despotism had terminated as favourably for the happiness of mankind!—In the political world, the chains of civil power, upheld by the numerous links of private interest, have proved more equal and permanent in their effects; they have, and I fear forever must, shackle the human understanding; and it is much to be questioned whether the full and free political opinion of any one great luminary of science, has been fairly disclosed to the world—Even when the great and amiable Montesquieu had hazarded a panegyric on the English constitution, he shrinks back with terror into this degrading apostrophe—"*Think not that* I *mean to undervalue other governments*—I *who think an excess of liberty*[,] *an excess of all things, even of reason itself, a misfortune, and that the happiness of mankind is only to be found in a medium between two extremes.*"[45]—The author of the Persian letters, at that moment recollected the afflicting presure he had felt from the hand of Gallic government, and his pen trembled as he wrote.

Is it then possible that governments of simplicity and equal right, can have been fairly dealt by in theory or practice? The votaries of tyranny and usurpation stand not alone—in bitter opposition; every man of enterprize, of superior talents and fortune, is interested to debase them; their banners have ever been deserted because they never can pay their troops.—The most amiable and sensible of mankind seem to have made a stand in favour of a mixed government founded on the permanent orders and objects of men.—Thither I suspect the American government is now tending. If it must be so—Let it go gently then—with slow and equal steps.—Let each gradation and experiment have a full and fair trial—Let there be no effect without a good, apparent and well considered cause—Let us live all the days of our lives, and as happily as circumstances will permit.—Finally, let moderation be our guide and the influence of manners will conduct us (I hope without injury) to some permanent, fixed establishment, where we may repose a while, unagitated by alteration or revolution—For in sudden and violent changes, how many of the most worthy of our fellow-citizens must get their bones crushed? 5.1.69

I cannot think that any *able and virtuous citizen,* would in his cool and dispationate moments, wish to blend or risque the fundamental rights of men, with any organization of society that the Americans can or will make for fifty years to come.—Let us keep these rights of individuals—these unalienable blessings[—]reserved and separated from every constitution and form—If they are unmingled, the attentive eyes of every citizen will be 5.1.70

kept fixed upon them. We shall watch them as a sacred deposit, and we may carry them uninjured and unimpaired through every vicissitude and change, from the government we have left, into some other that may be established on the fixed and solid principles of reason.— Nor can there be, I imagine, any *prudent man,* who would trust the whimsical inventions of the day, with that dangerous weapon *a standing army,* in our present unsettled circumstances—striving to substantiate inefficient and unnatural forms—it would wield us into despotism in a moment, and we have surely had throat-cutting enough in our day.

5.1.71 Throughout the world government by representation, seems only to have been established to disgrace itself and be abolished—its very principle is change, and it sets all system at defiance—it perishes by speedy corruption.—The few representatives can always corrupt themselves by legislative speculations, from the pockets of their numerous constituents—quick rotation, like a succession of terms tenants on a farm, only encreases the evil by rendering them more rapacious. If the executive is changeable, he can never oppose large decided majorities of influential individuals—or enforce on those powerful men, who may render his next election [ ] the rigor of *equal law, which is the grand and only object of human society.*—If the executive is to be rendered ineligible for a certain period, he will either *not do his duty,* or he will retire into the unprotected situation of a private individual, with all the sworn animosities of a powerful majority—aristocracy—junto—the cry of the populace, or perhaps the whole combined to pursue him to the grave, or a public execution.[46] The considerate and good, who adorn private life, and such only can be safely trusted in high public station, will never commit themselves to a situation where a conscientious discharge of duty may embitter the evening of life, if not draw down ruin and infamy on themselves and families.—There never was but one man who stepped from the top to the bottom, without breaking his neck, and that was Sylla; and although it is true that whilst he was up, he broke the hearts of the Romans, yet his dying undisturbed in private life, is one of those miracles that must remain forever unexplained. If the aristocracy, or representation of wealth, (the principle of wh[i]ch order is to keep all things as they are, for by confusion they may lose more than they can gain) is also changeable, there then is nothing fixed and permanent in government.—Legislative tyranny commences, and exhibits a perpetual scene of plunder and confusion, fearlessly practised under the sanction of authority and law. It is true that the influence of manners may and will resist for a time; yet that must give way to a general and prevalent corruption—Those who are respectable at home and have permanent [ ] in life, and such only can give stability to government, will not suffer themselves to be mounted up on the wheel of fortune, to be let down again as it turns, the mockery of children and fools.—Where representation has been admitted as a component part of government, it has always proved defective, if not

destructive. What then must be the consequence where the whole government is founded on representation? Every American can now answer, it will be at best but—*representation of government*—with us the influence of manners has been great—it is indeed declining fast; but aided by the solidity of the judiciary establishments, and the wisest code of civil laws, that ever mankind were blessed with, it has hitherto supported the forms of society: But the people are now weary of their representatives and their governments.—We may trace the progress.—One candidate, to recommend his pretensions, discloses and descants on the errors of the preceding administration—The people believe him and are deceived—they change men; but measures are still the same, or injured by the sudden and violent alteration of system[47]—At least the next candidate asserts it is so—is again believed, and his constituents again deceived; a general disgust and sullen silence ensue; elections are deserted; government is first despised, and then cordially hated.

There can be no fixed and permanent government that does not rest *on the fixed and permanent orders and objects of mankind*.[48]—Government on *paper* may amuse, but we pay dear for the amusement, the only fixed and permanent *order* with us at present are the YEOMANRY, and they have no power whatever,—unless the right of changing masters at a certain period, and devolving on their changeable representatives their whole political existence—may be called power—The order of GENTRY, with us, is not a fixed and permanent order at all, and if they attempt to erect themselves into one at present, it is usurpation, and they will be pulled down; and yet, in my opinion, such an order is essential to a perfect government, founded on representation.—Every other mode of introducing wealth into power, has proved vicious and abominable.—With us delegates become by selection, themselves a species of subaltern aristocracy—they intrigue with the senates, who by a refined mode of election are a misbegotten, side blow, representation of wealth, and they both form an imperfect aristocracy, on the worst principles on which that order can be admitted into government—and the democratic influence which is thus amalgomated and not divided, but unformed becomes vicious from its impotence. 5.1.72

These defects spring from our attempting to erect republican fabrics on the ruined and imperfect pillars of an old corrupt monarchy—not less absurd, than to expect the limbs to perform the functions of life, after cutting off the head.—The opposition which brought Charles the first to the block, was composed of some of the ablest and most virtuous characters that ever adorned any age or clime—Hampden, Pym, Selden, Sir Harry Vane, Sydney, Marvell and many others.—They pursued their old model—attempted to form a government by representation which was at first steadied and restrained by the best senate in the world, (the English House of Lords)—the two houses soon disagreed, and there being no third power to interpose, the representatives, voted the House of Lords useless—new modelled the 5.1.73

government into a single branch, and then began to plunder most unmercifully—At last Cromwell kicked them all out of doors, and after his tyrannical usurpation and death, the nation were very happy to take shelter again under the regal government, and even restored an unworthy family (which they had irritated beyond forgiveness) to the throne.

A Farmer.

(*To be continued.*)

28 March 1788

(*Continued from our last.*)

5.1.74 After every consideration I can give this subject, I am satisfied, that *government founded on representation*, indispensibly requires, at least an executive for life, whose person must be sacred from impeachment, and only his ostensible ministers responsible—A senate for life, the vacancies to be filled up and the number occasionally encreased but under a limitation, by the executive—the hand that holds the balance must have the power of adding weight and influence to the lightest scale, and of frequently removing turbulent men into an higher and inoffensive situation:—I am inclined to think that an important portion of American opinion leans that way at this moment—My fear is, that our general government may ultimate in an hereditary authority—if not despotism—to avoid the former, great attention should be paid to the important office of Vice-President—at present but little understood:—A Vice-President to succeed on a vacancy prevents those evils which have ruined Poland and all the northern kingdoms—thus we see the King of the Romans has secured Germany from every evil of elective monarchy, and had the golden bull prevented one of the family or kindred of the reigning Emperor from filling the office of the King of the Romans, this part of the Germanic constitution would have been perfect, and the house of Austria would never have been enabled to usurp the imperial crown as a patrimony and desolate Europe with her ambitious views; she would have continued in that beggarly condition from which Rodolph of Hapsburg raised it—The American constitution is much better guarded but not by any means completely so.

5.1.75 If this is the best we can hope for—if this is the best reward we can expect for the sons of America slain, and the distresses we shall long continue to feel—is it not incumbent on us to examine minutely all its consequences?—Let us view government by representation in its favorite form—The constitution of England—its uncommon success and length of duration there, has drawn on it very unmerited encomiums from the enlightened Genevan[,] Delolme—the only great political writer who does not

seem to hold representation in contempt,[49]—indeed the viewing it through this favorable medium has always animated our hopes, and led many sensible Americans to imagine, this old and universal experiment, to be peculiar to that isle—In pursuing my inquiry into the principles and effects of the British government, I shall first grant that it is a rational system, founded on solid, safe principles—and one of the best governments for the higher ranks of mankind in the world—but then I must insist that it was hardly a government at all, until it became simplified by the introduction and regular formation of the effective administration of responsible ministers, on its present system—which we cannot date higher up, than the appointment of Lord Strafford and others by Charles 1st.*—Moreover I do not know how far the system of bribery introduced by Sir Robert Walpole, and the influence of the numerous body of public creditors, are not now absolutely necessary to its present stability—and after all, I am not satisfied how such a simplification as would produce a responsibility, can be effected in a government, complicated by so many subordinate and powerful corporations as the American States will be—and yet responsibility must be attained and an easy and certain mode adopted, of changing measures and men without commotion, or liberty will be lost in the attempt—I am confused and bewildered when I arrive at this point of reflection, and despotism meets me at every turn.—There are but *two* modes of governing mankind, by just and equal law, enforced impartially on all ranks of society, or by the sword:—If such laws cannot be obtained, or the attainment is attended with too much difficulty, the sword will supply their place; *et inter arma leges silent. When arms command the laws are disobeyed.* Shall we have patience, with the disorders of our complicated machine? As Alexander dissolved the gordian knot with the sword—so I fear a standing army will simplify the governments of America—I have said that the government of England afforded firm protection of property—it certainly does so, comparatively speaking—yet the history of its frequent revolutions, will discover that even property is insecure there. During the civil wars, in which the Stuarts involved this nation, two-thirds of the property of the kingdom changed masters; and in those between Lancaster and York, and before the firm establishment of the line of Tuder, almost all the old families perished and their property became dissipated:—And yet its protection of property is its favorable side; turn your eyes to the lower order of citizens, and they are pressed into the earth by taxation and imposition—very rarely will industry enable the husbandman to rear a family—where the sons of agriculture are so poorly rewarded, government must be ulcerated to the heart—the miserable poor who pursue the dictates of nature and religion, in that connection which is destined to sweeten the bitter draught of life, are commonly handed

*Before that period they were minions and favorites, who by plundering and oppressing the people excited constant commotion, and were seldom changed but with their masters, and by the axe or halter.

from constable to constable, until their unfortunate birth compels some parish to own them.—The people of England have always and forever will emigrate—The people of England never repair to arms to repel foreign invasion—and they never will unless compelled—to conquer England, it would only seem necessary from past example, to escape their floating defences and land on the island; passing by former invasions and conquests. As late as the year 1745, Prince Charles Edward, at the head of an undisciplined rabble, belonging to some Highland clans attached to his family, marched undisturbed, through the most populous counties into the heart of the kingdom, and the capital containing 200,000 fighting men trembled for its safety at the approach of an unexperienced boy, followed by 4 or 5000 half armed peasants—scarcely a man in the kingdom shouldered a musquet until the danger disappeared, and government owed its safety to the protection of foreign mercenaries, or rather the weakness and irresolution of the assailant—The fact is, the people will never fight (if they can help it) for representatives, taxes and rags.

5.1.76 Let us now contrast this scene with one, where the people *personally* exercise the powers of government[50]—The three small democratic Cantons of Uri, Schuitz and Underwald, broke the chains of their former servitude, and laid the foundation of the Swiss confederacy—they effected the revolution, and in conjunction with the other democratic Cantons and their democratic allies the Grisons, have supported the grand fabric of Helvetic liberty to this day. Every Swiss farmer is by birth a legislator, and he becomes a voluntary soldier to defend his power and his property; their fathers have been so before them for near 500 years, without revolution, and almost without commotion—they have been the secure spectators of the constant and universal destruction of the human species, which the usurpations of the *few* have ever created, and must I fear forever perpetuate:—Whilst all Europe were butchering each other for the love of God, and defending the usurpations of the clergy, under the masque of religion, the malignant evil crept into this sacred asylum of liberty; (but where the government resides in the body of the people, they can never be corrupted by the artifice or the wealth of the *few*) they soon banished the daemon of discord, and Protestant and Papist sat down under the peaceful shade of the same tree, whilst in every surrounding State and kingdom, the son was dragging the father, and brothers, their brothers, to the scaffold, under the sanction of those distinctions:—Thus these happy Helvetians have in peace and security beheld all the rest of Europe become a common slaughterhouse.—A free Swiss acquires from his infancy, a knowledge of the fundamental laws of his country, and the leading principles of their national policy are handed down by tradition from father to son—the first of these is never to trust power to representatives, or a national government. A free Swiss pays no taxes, on the contrary he receives taxes; every male of 16 years, shares near ten shillings sterling annually, which the rich and powerful

surrounding monarchies pay for the friendship of these manly farmers. Whenever their societies become too large, as government belongs to the citizens and the citizens are the property of no government, they divide amicably, and each separate part pursues the simple form, recommended by their ancestors and become venerable, by the glorious and happy experience of ages of prosperity—Their frugal establishments are chiefly supported by the pay which the officers of government receive for the services they render individuals. With a country the most unfriendly to industry in the world, they have become in a series of years, passed in uninterrupted but moderate labor, frugality, peace and happiness, the richest nation under the sun. I have seen a computation, by which it appeared, that the interest of the money they have before hand, and that which is due them from the rich nations of Europe, would support themselves and their posterity forever, without farther exertion; and this whilst every other government is actually as much or more in debt than it is worth.

An intelligent author has remarked, that passing from a democratic to an aristocratic Canton of Swisserland, you quit the society of men to contemplate the regular labor of brutes;[51] they are compelled indeed in the aristocratic Cantons to be extremely moderate in their government, and to lay few or no taxes, or they would drive their subjects into the neighboring free States—as it is, they are well cloathed, well fed and taken good care of—The same author remarks, that the line which separates all Swisserland, from the countries around (where men like cattle are the property of their proud Lords and kept chained to the soil) is the line of division between light and darkness—between happiness and horror. 5.1.77

The love of the Switzers for their country is altogether romantic and surpasses the bounds of credibility—those memorable relations authenticated by the common consent of all historians, of their beating on all occasions the flower of the Austrian and French troops (who have invaded them) with numbers so unequal and trifling as scarce to exceed their enemies out-guards; the instances of hundreds of citizens devoting their lives for the safety of their country; of their frequently disdaining life and refusing quarter when overpowered by numbers, have astonished and terrified the neighbouring powers, and seem incomprehensible to a people dispirited by taxes, overloaded with debts and disgusted with government. I cannot omit a striking characteristic, authenticated by Coxe and others, whose authority will not be questioned; they relate that there is a rustic tune familiar in the mountains of Swisserland—it is called the *Rantz des vacques*—it consists of a few simple notes of native wild melody. The French and Dutch governments have been compelled to forbid under very severe penalties, the playing this woodland music, to those Swiss troops, which they hire for a limited time; the well-known notes revive instantly all the fond images, which were impressed on their youthful bosoms, their friends, their parents, their relations and their beloved country, rush into their imaginations in a full tide 5.1.78

of affection—no persuasion can detain them, they desert home in regiments, or if retained by force, they pine away in the deepest melancholy—no instance has yet occurred of Swiss troops serving in any part of Europe, who have not returned, with the diligence and anxiety of affectionate children, on the first appearance of danger to their parent country:[52]—The same amor-patriae, the same divine love of their country, universally pervades the bosom of every citizen, who in right of his birth, legislates for himself:—Grosley relates that he saw in Rome a poor fellow (who had travelled through great part of Europe and Asia afoot) declaiming to a crowd with the most passionate zeal, in praise of his own country, boasting of her happiness and prefering San Marino to all the world besides[53]—This democratic republic, is a little bee-hive of free citizens, who have made a delicious garden of the top of a bleak barren mountain, situated in the midst of the finest and most fruitful plains of Italy, which tyranny has depopulated around them.—Look into the human breast—We love that power, which we exercise ourselves, but we detest that which others exercise over us, be they Representatives, Lords, or Kings; and to this source we may trace the abuse, which the Americans bestow on their country and their governments.

5.1.79 But we are told that Swisserland, *should be no example for us*—I am very sorry for it—they are the only, the only part of the human species that sustain the dignity of character, belonging to the divine resemblance we bear.—*they are few in number it is said*—This is not true—they are more numerous than we are—*They cover a small spot of territory*—this is also not true—they possess a large tract of country in the very heart of Europe—but this is not all—The Helvetic confederacy, including the three leagues of the Grisons comprehends one hundred perhaps two hundred, independent governments and States—nor is there any reason from their history or present state to doubt, that the same plan of confederation might not be extended with as lasting and happy effects to one thousand independent governments—But it is also said *they are a poor, frugal* people—As to their poverty that is likewise untrue—they have great sums of money before hand and owe not a six-pence—they indeed are a wise and consequently a frugal people—though they still have great estates and even luxury among them too—But should we despise their poverty or their frugality? We who are so many millions worse than nothing? *But still we are told we must not take example from them—we must take example from Holland and Germany*—They had better at once tell us, that we must desert the worship of God and follow that of the devil.

5.1.80 From the first dawn of light, that broke in upon my reason, I became devoted to governments of simplicity and equal right—The names of heroes, whose blood has bedewed the altars of freedom, vibrate like the shock of electricity, on my frame; and when I read the story of Brutus and of Cassius, the most noble and the last of the Romans, tears of admiration gush from my

eyes.—Under these impressions which only the grave can erase, I feel unspeakable horror at every step, which removes power and rights, at a greater distance from the body of the people, to whom they belong, and confines them to the hands of *the few*. I have proposed to myself this question: If representatives cannot govern the people—If they abuse the power entrusted to them, shall they devolve this power on a still smaller number, who must be more liable to corruption from the encrease of temptation? Or should they restore it into the hands of the people, from whom they received it? who alone are incorruptible, because the wealth of the few can never bribe the many, against the duty they owe to themselves. If I am told that the people are incapable of governing themselves—I shall answer that they have never been tried in America, except among the native Indians, who are free and happy, and who prove that self-government is the growth of our soil—And I also answer that they are more fit for self-government, than they are at present for any of the safe and solid governments, founded on representation.—When I see all these principles established by the example of the Swiss, who have remained under the simplest of all forms of government for near five hundred years, in uninterrupted tranquility and happiness—whilst every other invention of genius, devise of art, or imposition of force, has been torn up by the roots, with every aggravated circumstance of horror—I can no longer doubt—All the mists of theory and speculation vanish before an experiment like this.

The greatest human discernment, ever concentrated in the mind of one man, was the portion of the celebrated Nicholas Machiavelli—a name loaded with abuse by tyrants, flatterers and the mushrooms of science, because he told the truth; because he was a republican and the friend of mankind in times of usurpation; or because, they have never read or do not understand his works. After every inquiry which the most unbounded information and reflection, with a long experience in high public office afforded, Machiavelli, delivers his deliberate opinion in favour of the body of the people, as the only safe depository of liberty and power—He prefers it to the aristocracy and the Prince; but he does not disgrace the inquiry by mentioning representation.[54] If this was the opinion of Machiavelli, a citizen of Florence, where a numerous populace confined and crowded within the walls of a city, formed the most turbulent republic, that ever disgraced the cause of freedom by cruelty and anarchy—How much more favourably must his decision apply to the yeomanry of America—Landholders and consequently the most independent of mankind, mild by nature, moderate by manners, and persevering in every honest pursuit:—Surely if ever men were worthy of being entrusted with their own rights, the freeholders of America are—*Make them then and their posterity legislators by birth*—I mean not the lowest populace—I mean that class of citizens to whom this country belongs:—Numbers unqualified by property, should have their influence—they should be protected—they might preserve the right of 5.1.81

election—But they who hold the property of the soil, are alone entitled to govern it:—To effect this there would need but little change in the present forms—They might all stand—But the laws which pass the legislature before they become binding, should be referred to the different counties and cities—printed reasons drawn by committees, might if necessary, accompany each, together with an annual estimate of public wants and a detail of the expenditures of the former sums granted. Let these laws then be submitted to the free deliberation of the *freeholders* of the counties and cities—the numbers of the yeas and nays be taken on each by the presiding magistrate, and transmitted to the executive, who may then upon comparing the returns from the several counties and corporations, declare what laws are the will of the people. On the appearance of any sudden danger the two houses or indeed a majority of one house, might invest the Executive with that authority, exigency might require for the safety of the republic, until remedy should be provided by law.

5.1.82 The number of representatives might be decreased and an expence saved—this would at one blow destroy all legislative speculations—the influence of demagogues, or oligarchic juntos must then cease—The assemblage of the freeholders, separate in different counties would prevent disturbance—As no new law could be made in them, little confusion could ensue—After some years, or even immediately if confined to future cases—the celebrated law of Geneva might be introduced, and no freeholder admitted to the assembly until he had paid his father's debts. Sumptuary laws, permitting the use, but prohibiting the abuse of wealth, might be interposed to guard the public manners.—The Governor and two members of the senate might constitute a council of censors, to punish offenders against the sumptuary laws and the laws of morality, by a removal from office, and even disfranchisement, if necessary, with an appeal to the people of the county where the offender resided, in the latter case, and to the people of the State in the former.—Seminaries of useful learning, with professorships of political and domestic œconomy might be established in every county, discarding the philosophy of the moon and skies, we might descend to teach our citizens what is useful in this world—the principles of free government, illustrated by the history of mankind—the sciences of morality, agriculture, commerce, the management of farms and household affairs—The light would then penetrate, where mental darkness now reigns.—Do these things and in a very few years, the people instead of abusing, would wade up to their knees in blood, to defend their governments.

5.1.83 For some years past this has been the darling object of my life—to which all my views have tended—And I now think that nothing intermediate would be lasting or worthy the pursuit—Whenever I fairly lose sight of this—As soon as I turn my back forever on these dear illusions, which will be as soon as the proposed fœderal government is adopted—I shall turn all my wishes

to that social state, whither that government will lead us, and I both hope and expect that with those amendments and guards, which it seems to be the general disposition to provide—it will gradually maturate in a safe and reasonable government.—Until that adoption I speak to my fellow citizens in the words of the proverb—*Do not that by others, which you can do yourselves.*

A Farmer.

VI
1 April 1788

Retired in the country the publication by *Aristides* did not reach the *Farmer* until this moment.[55] The object of the remarks by the *Farmer* was to draw the attention of the public to a question of the greatest magnitude to them and their posterity; and the *cause* in which he has ventured to publish his sentiments is a *cause* of the United States.—The great and manifest defects in the *national* government proposed for America,—the omission of a declaration to ascertain the *rights* of the several *States*, and the *rights* of *individuals*, the primary object of every good and free government, particularly the trial by jury on suit against a *federal* officer for abuse of authority;—the want of proper checks to prevent the abuse, or annihilation of those rights;—the manifest danger to public liberty from a standing army, without limitation of number, in time of peace;—and the pernicious doctrines of *Aristides;* alone induced the *Farmer* to lay his reflections before the tribunal of public opinion. 5.1.84

It would give the *Farmer* real pain to stain a *public* cause with *private* altercation, and he flatters himself that his candid and impartial readers will admit, that his *first* address, which has given so great offence to *Aristides*, and which he calls abuse, slander, calumny, and a wanton and unprovoked attack on *his good name*, was temperate, moderate, and decent, and even respectful to that writer. The *Farmer* took the liberty to condemn and to expose the doctrines and errors of *Aristides;* but with charity he imputed his opinions to defect of judgment, or want of information. A good and virtuous citizen may, from want of understanding, maintain principles incompatible with the public welfare. If his integrity is not accused he should bear admonition or reproof with temper and moderation. If his opinions are censured he should justify or explain them with candor and decency, and should treat his adversary with respect. If his motives of action are questioned, he should defend himself with dignity and manly firmness, without petulance or asperity, or as *Aristides* recommends, *"he should behave like a gentleman." Personalities* are always odious and can only be *excused* by 5.1.85

the imputation of political opinions to improper, unworthy or base motives. The *Farmer* could not possibly entertain any *personal* resentment against *Aristides*. A knowledge by sight and a very few occasional conversations comprehend all the acquaintance between them. The *Farmer* was disposed to think well of *Aristides* from the report of some few of his acquaintance, and not from his own declaration, however solemn, of his immaculate purity, and love of country; for in this degenerate age the integrity and the patriotism of men must be measured by their actions, and not their professions.

5.1.86 The *Farmer* disdains intentionally to *misrepresent Aristides*, he may have been so unfortunate as to have *misunderstood* him.[56] It seems that what the *Farmer* considered as the *opinions* of *Aristides* were only *objections* to a bill of rights by *some eriel forms*, which he has pleased to usher into his drama to close the catastrophe, when from the former character he had assumed, he could not so well appear with the *sword* himself. Why did *Aristides* put *groundless* objections in the mouths of any persons, which no persons had ever used? What sense is there in making objections of no weight (and which he himself despised) to a bill of rights, under the covert of persons of his own creating?—If the *Farmer* misunderstood *Aristides*, it might have arose from his combining with his *general* doctrine a report of a declaration by him of the respect and regard he would pay to the Maryland bill of rights in his judicial capacity.—The *Farmer* then firmly believed, and he still believes that *Aristides* thought that bills of rights were considered in Europe as grants of Kings. The *Farmer* knew that this had been the language and argument of a Judge of another State.[57] All the arguments of the *Farmer* went to prove that they were not so considered in Europe, attended with the observation that he never knew the doctrine advanced in print, but by *Filmer* and *Aristides*.

5.1.87 *Aristides* insinuates that the remarks of the *Farmer* on his opinions proceeded from his desire *to pay* COURT to a gentleman who lately held the highest office in the State.[58] This insinuation is as false as it is mean and illiberal. The *Farmer* can respect and esteem the *public* and *private* virtues of a citizen without degrading himself to the lowest servility of the lowest sycophant. The *Farmer* has never dealt in the fulsome language of modern dedications, and if inclined, he could not direct his flatteries to obtain any office civil or military, under the *new* government. The *Farmer* has no wish to conceal himself from the apprehension of censure from an impartial public; and from the resentment of *Aristides* it is impossible he can have any thing to fear. A fancied superiority, and insolence of office gave birth to this unwarrantable suggestion.

5.1.88 There may be other reasons why *Aristides* has thought proper to make known his real name to the public than those he has suggested. If his vanity prompted him to believe, that his character would carry respect and authority to his publication, never was any political writer more mistaken. His

pamphlet will injure the *cause* he undertakes to defend wherever it appears. It might be expected that *Aristides* would be more competent to understand the part of the new constitution, that establishes the JUDICIARY, than any other. He approves the *whole* system, and yet he knows the *least* of what he ought to understand the *most*. He says the article erecting the *judiciary* has been generally misconceived, and the *Farmer* verily believes by no person more than by *Aristides*. That Farmers and Planters should not comprehend the jurisdiction of the *federal judicial power* might be expected; but that a great *law character*, like *Aristides*, should so egregiously blunder, is very astonishing. A man grossly mistaken in his profession may be justly suspected in other subjects.

Aristides asserts, "that *the inferior federal* courts, and the *State* courts will have *concurrent original* jurisdiction in all the enumerated cases, *wherein an appeal lies to the supreme federal court*, except only the cases created by, or under the proposed constitution."[59]—By the second section of the third article, "The judicial power is to extend to all cases, in law and equity, arising under the *constitution*, or the LAWS of the United States; and to all controversies between citizens of *different* States, and the citizens of any of the United States, and the citizens, or subjects, of *foreign* States"; and by the eighth section of the first article, "The Congress are invested with *power* to levy and collect taxes, duties, imposts, and excises; and to make such *laws* as shall be necessary and proper for carrying into execution these powers." *Aristides* contends that a *federal* officer, say an excise officer, may be sued by a citizen in a *State* court (I suppose any county court as well as the supreme court) for an abuse of his authority; and with confidence he asserts, "That *no sound lawyer, of a good moral reputation* will maintain the contrary opinion"; and he treats with supercilious contempt the objection of want of remedy in a *State* court, and a trial by jury *for* the citizen *against* a *federal* officer, for an abuse of office, "as a ridiculous bugbear, fit only to alarm minds on which no science has ever dawned."[60] Is it not evident that the jurisdiction in the cases *above-mentioned*, is *expressly* given to the *inferior federal* courts, with an appeal, both as to law and *fact*, to the *supreme federal* court?—Is it not clear that it was intended to keep the *federal* and *State* jurisdictions entirely separate? Were not the *subordinate federal* courts established to protect the continental revenue officers from the *State* jurisdictions?—If an action would lie *against* a *federal* officer in the *State* courts would it not blend and confound the *two* jurisdictions, and that too without any appeal from the *State* courts?—Is not the *supreme federal* court superior to the *State* courts? Is it not superior to the bills of rights, and the constitutions, of the several States?—If the *State* courts have *concurrent jurisdiction* with the *inferior federal* courts, that is, if any suit of which the *latter* has cognizance by the *new* government, may notwithstanding be instituted in the *former*, is it not self-evident that there may be *different* adjudications on the SAME question; and if decided in the

5.1.89

inferior federal court with an appeal, if decided in a *State* court without any appeal, to the *supreme federal* court? What would be the effect of opposite decisions by two courts having concurrent jurisdiction?—If an action is commenced in a *State* court, *Aristides* thinks, and justly too, that thence there is no appeal to the *supreme federal* court, but only to their own high court of appeals, as heretofore. With confidence he maintains that as the jurisdiction of the *State* courts is *not* taken away by an *express* clause, or *necessary implication,* that they will still have cognizance of those cases of which jurisdiction is given to the *inferior federal* courts. The *Farmer* believes there is not another lawyer, or Judge, *of sound judgment in the law,* in all America, that entertains a similar opinion.—The *Farmer* is so bold as to hazard his opinion, contrary to that of *Aristides,* that if a citizen of Georgia, or subject of Great-Britain, has any claim against a citizen of Maryland, or if he has any claim against them, that suits in such cases, after the establishment of the *national* government, can only be commenced and prosecuted in the *inferior federal* courts, because the *State* courts are ousted of their jurisdiction of those cases, by *necessary implication,* from the obvious motives for the establishment of the *federal judiciary,* and the evident absurdities that must flow from a *concurrent jurisdiction* in the SAME cases. Is it not absurd to suppose that the *national* government intended that the *State* courts should have jurisdiction to decide on the LAWS of the *United States,* whether consonant or repugnant to the *national constitution;* or whether the *federal* officers abuse their authority?—And yet the grave, the solemn, the didactic *Aristides* asserts, "That every *State* Judge will have a *right* to *reject* any *act* handed to him as a *law* of the United States, which HE may conceive repugnant to the constitution."[61] How perverted or confused must be the head of that man who can seriously entertain so ridiculous an opinion! He can never claim from his knowledge of the *national,* or any other government to be one of the Judges of the most inferior of the inferior *federal courts—Risum teneatis.* A puisne Judge of a petty State (of Delaware, or Rhode-Island) to have a *right* to declare a LAW of the United States VOID? Will any *sound lawyer,* his moral reputation out of the question, risk his *legal* character so far as to maintain his assertion?—If *Aristides* has not too much pride to be convinced, if he has the candour he professes, or the legal or political knowledge he wishes the world to believe, he would not obstinately continue in error, but confess, how greatly he has misunderstood the *judiciary* system of the *national* government

5.1.90 If *Aristides* shall determine to mix *private* resentment with a *public* cause, if he cannot discuss political questions without descending to offensive personalities, or if he wishes to examine into the motives or private reputation of his *adversary,* as he very improperly calls the *Farmer,* he is informed that the *Farmer* has left his *real* name with the Printer.—If *Aristides* can discover ought in the life or manners of the *Farmer,* the detection of which may serve the public cause, or gratify private malice, he has free liberty to

publish, to expose it to the world, in the strongest colours;—he will for his own sake confine himself to fact.—Calumniating invective may rouse any temper. *Aristides* has too long held a licentious pen with impunity.

A Farmer.

March 24, 1788.

VII
4 April 1788

Aristides with a degree of confidence, which many will deem presumption, insinuates that his arguments can only be combated by sophistry:— Language expressly calculated to impose on the uninformed mind may be justly suspected; but remarks addressed to the reason of *those* who are happy in education and leisure for reflection, can never do injury:— *Sophistry* may blind or mislead the wavering and inconstant mind, of the humble and unenlightened individual; but to convince the understanding and rouse the spirit, of the intelligent part of mankind, is the sacred province of *truth* alone. 5.1.91

To examine and elucidate the great and leading principles of government, we must penetrate to the source of human action, and explore the heart and constitution of man;—a consciousness of the equal rights of nature, is a component part of that aetherial spirit, which we dignify with the appellation of soul; the ardent desire and unceasing pursuit of equality, can therefore be no more destroyed by human power, than the soul itself; the chains of terrestrial despotism may confine, afflict and bow down to the earth, this mould of flesh; but the soul more free than air, quits this mortal frame, surrounded by ills no longer supportable, and after witnessing the final overthrow of all its hopes in this world, retires with indignation, into a world unknown. 5.1.92

Let any people be personally and fairly consulted on the form of that government, which is to rule them and their children, and they will establish the *law of equality* as its basis;—the unequal division of property silently and gradually undermines this foundation, almost as soon as society is formed; or before a new compact is confirmed, this equality is materially injured if not destroyed.[62]—Montesquieu justly observes that men, in the advanced stages of government, quit the equality of nature, from the moment of their birth, never to re-enter it but by the force of equal law;[63]—the law then that is equally enforced on all ranks of society, to which the *great* and the *humble,* are compelled to submit, is the next state of equality, to which this ever active principle of the mind aspires; with this it would be content, as the most perfect state of liberty, which exists only, in a just 5.1.93

medium between two extremes; but in the attainment and preservation of this, the efforts of the human understanding never keep pace with the will.

Quicquid delirant reges, plectuntur achivi.

It is the poor people who suffer for the misrule of the great.[64]

5.1.94 Laws are cobwebs, catching only the flies and letting the wasps escape. The great and powerful can easily bring to justice, the *poor and humble offender;* but who is to lead to punishment the *great?* These lords of the earth, who have extensive and powerful connexions, who aim at no trifling larcenies; but who plunder a people of their liberties and put public revenues into their private purses, under the sanction of laws made by themselves:—These are the men who deprive their fellow mortals of their fondest hopes, and compel them to resort to the supreme aim of a monarch—to the authority of a single person—who exalted far above all may reduce them all, once more to that common level of equal law, of which mankind never lose sight:—*Come we will choose one man to rule over us!* is the cry of a people who are tired of the rule of the *elders*—the meaning of the word senate, is an assembly of elders; but this the last and most fatal step, is never retrieved, until government returns through blood into that original chaos—from the discordant elements of which, new and equal forms of society arise, created upon first principles.

5.1.95 The corruption of the rule of one man is also regular and perhaps like every other progressive step of *mixed government*—unavoidable.—He is at first limited and his hands tied; but as the powerful and strong are alone able to keep him confined—they are the checks which are necessarily imposed —The elders, or the senate, are always joined in power to guard against his usurpations:—The people in this event, find that instead of a protector of their equal rights, they have elected a patron for the rich and powerful, who, under the sanction of his name and authority, plunder and oppress with still greater security.—If a weak Prince should attempt to curb their insolence, he generally becomes himself the sacrifice to his own temerity—the proud chiefs rebel—put new shackles on their principal;—until at length tired of his own uneasy and dependant situation—disgusted at sheltering evil and his incapacity to do good –Some able and politic chieftain breaks the bonds of restraint; perhaps with the manly boldness of a Gustavus Erickson, he may demand of the representatives of the nation, to take back that power which is only a cloak for vice and which is too weak to do good.—He may request them to deprive him of the authority he had received, or give him that which would enable him to secure the public prosperity and private happiness.—Let him leave the legislature with a stern firmness—retire to an army who adore him, the submission must follow;—or let such a chief pursue the more usual rout to power—let him profit of the discontents of the multitude and he will quickly fasten the cords of authority around the necks of the great.

5.1.96 The chief magistrate is now cloathed with full authority to *do good*.—If he

does so, he confirms a solid tyranny for his degenerate successors—For if power does not corrupt him it certainly will those that follow:—In this view, the best elected magistrates have only entailed misery on mankind—the wise and moderate administration of Augustus, (who was appointed commander in chief of the established forces, and was annually elected consul during the whole period of his life) secured the power and gave full scope to the vices of Tiberious. Caligula and Nero in whom the Julian line ended:—A veneration for the memory of Titus enabled his brother Domitian to sink the spirit of the world, and the divine Marcus Aurelius found that the lustre of his own virtues would frustrate every endeavour of his disinterested and patriot head, to set aside the election of that monster, his son, or rather his wife's son Commodus; for Marcus Aurelius could never have been the father of such a son—and the latter end of this all-accomplished mortal, was embittered with the prospect, of the misery of his fellow citizens under the administration of a brute—As to hereditary chief magistrates, I perfectly agree with the Marquis Mirabeau, and what he says of France may be justly extended to the whole world—he says, if I recollect right, that in 1100 years there have been but four Princes on the French throne, that did not deserve the gallows.[65]—In England, an Henry IId. was succeeded by a brute, a coward and a fool.—Richard, John and Henry—the valiant and just Edward the Ist. made way for the mean and despicable Edward IId—the Great Edward the IIId and his adored son, the Black Prince, crowned the English throne with laurels to be lavished away by the profuse and injudicious hand of Richard IId—and the valiant Henry the Vth. transmitted his glory and authority to be tarnished by his weak son, Henry the sixth.—In fine, there is no general truth more fully established than, that human beings entrusted with power will abuse it—from the Prince who fills the throne, down to the degraded negro, who beats his poor plough-horses and oxen so unmercifully:—There is a humane and benevolent saying of an illustrious Prince, the Marshal Vendome, which deserves to be imprinted on our minds in indelible characters.—He said that in a long march he listened attentively to the quarrels between the muleteers and the mules, and that he found the mules always in the right—thus the possession and the abuse of power seem inseperably connected.[66]

The rule of any one man, who is elevated to a pre-eminence of power, is always surrounded by those vile minions and favorites, who bask in the sunshine of courts—deify the object of their adoration with the venal incense of flattery—intercept every avenue to truth, and who never can be satisfied until they reduce the people to the slavery of the ancient Persians—who, when their Prince ordered them to be well bastinadoed, were obliged to fall down upon their knees and say—*We thank you most gracious Sovereign for deigning to recollect us.*— 5.1.97

But it will be asked can this happen in America?—My countrymen, you will yet discover before your day is cold, a truth long established by every 5.1.98

political enquiry—that in all governments, in which there is sown the smallest seed of the rule of one man, no checks—no bars, can prevent its growing into a monarchy, or a despotism if the empire is extensive—And that to attempt to form a virtuous republic on the unqualified principles of representation is as vain as to expect a carriage to run with wheels only on one side.—Wheels will be added on the other, and the machine once set in motion down hill will never stop until it carries us to the *bottom*—then let us not set off without every necessary check.

5.1.99 It is true the proposed national system guarantees to each State a republican form of government—Whoever will look into Coxe's Northern Travels, will find that in the treaty whereby the three arch-despots of Russia, Germany and Prussia, divided that poor distracted country, Poland—they solemnly guarantee (in express words) to the said Poland—a *republican government forever.*[67]

A Farmer.

(*To be continued.*)

8 April 1788

(*Continued from our last.*)

5.1.100 The chief who is thus liberated from constitutional restraints, is under no control but the licentiousness of the soldiery:—The praetorian bands of the Roman and the Janizaries of the Turkish empire, have frequently stained the imperial purple with blood, and applied the bow-string to the haughty descendants of Othman—yet they are always the willing instruments of the cruelty of the Prince against all ranks of his subjects.

5.1.101 Here then we arrive at the summit of imperfection in human legislation—the magistrate whose will is law, is no longer restrained by the influence of manners—a regard to reputation or the desire of glory—the three ruling principles that guide the heart to virtue;—his own inclinations become the manners of the empire—establish reputation and fix the standard of fame.—Caius Caesar, who was declared Imperator or Emperor of the Roman republic (a title in its most extensive signification meaning only a military commander in chief) was devoted to lust—A grave senate of Rome—that senate which twenty or indeed ten years before, had commanded the awe and veneration of mankind, solemnly proposed a law, as Suetonius informs us, to submit their wives and daughters to his embraces[68]—it was his regard for the public reputation that alone forbad this sacrifice of the honor of the empire—the first Caesar was a compound of the most exalted virtue and deepest vice—but the fact discovers what instantaneous change, the slightest alterations of government may create in

the manners of a people—of a most enlightened and virtuous people—for the age of Julius Caesar, was the age of Cicero, Cato, Brutus, Cassius and of all that noble but unfortunate band of conspirators.—

But this furious passion which has celestial beauty for its object, soon banishes philosophy and moderation—even the glowing idea that gives all that is beautiful and amiable to our arms, makes the senses drunk with passion—What effects then must spring from the *idea realized*—all history informs us—the minds of all men, even the best unrestrained by their own, or the constitution of the State become inebriated with lust, from the times of David, the second chief magistrate of Israel—a man after God's own heart—and his son Solomon—the wise, who had the moderate share of seven hundred wives and three hundred concubines—down to the amorous Charles, (who restored to the English throne, before the republican fever had cooled, or Presbyterian sanctity had relaxed) yet contrived to fill the English peerage with his bastards.—The nation made one jump from the cold pulpit of religion into the hot-bed of vice—This irresistible passion marked with celebrity the decemvirate of Rome—a *tyranny* established by the free suffrages of the people, in the infancy and most quiet and virtuous aera of the republic; because they took it into their heads that their old constitution and laws were not good enough, and therefore sent to Greece for new ones:—If in the six and twenty senators of America, some future Appius may be found, I yet trust from the high confidence I repose in my fair countrywomen, that for many years a Virginia will not be wanting to re-act the Roman tragedy;—but all human virtue is frail—What the senate intended by law for Julius Caesar, the influence of manners provided for Octavius and his successors—Matrons and the beauties of the first rank of Rome esteemed it the highest honor to prostitute themselves to the artful Augustus, and even to such an infamous villain as Caligula:—The amorous dispositions of a succession of Princes, have rendered the present of the handkerchief the highest honor, to which female beauty and merit could aspire in the seraglio of Constantinople, and in the courts of the two Lewises—who preceded the present amiable and virtuous monarch of France; yet they were rewarded with implicit obedience, and Lewis the 16th meets with turbulence and resistance in his most meritorious acts:—Virtue only breeds confusion in perverted government.—Whoever will read what the pens of Suetonius and Tacitus have described, will be lost in admiration at the original and surpassing wickedness to which Rome arrived in less than half a century—But can these things happen to the Americans? What distinguishes the Americans, from the French—the Germans—the Turks or the Persians?—America is in a great measure peopled by emigrants from the old countries, now enthralled in slavery—Does crossing the Atlantic alter the nature of these people?—Let our countrymen reflect on this awful truth, that nothing creates that wide distinction between them, and the white slaves of the old world, or indeed their black slaves here, but *their*

5.1.102

government—Let them consider this well, and they will be rendered cautious how they change it—(bad as it is) for new imported constitutions—Amalgomated as we were with a corrupt old monarchy—with the combined corruptions of three armies—a constant communication with the luxurious and debauched capitals of the old world—we cannot be surprised, that some of our great cities are now ripe for any thing.—These remarks are intended for the thinking part of our citizens, and particularly those who are most active in promoting this revolution.—In the most important characters of this class of men, the author has great confidence:—America has more to dread from the want of information than the want of integrity in her rulers; and her own precipitation is the most dreadful of all. People should be liberal of every thing but power—but to give away an atom of their liberties is as criminal as dishonorable.

5.1.103 However degrading and disgraceful the state of society just described may be—worse as it is far than ten thousand deaths to a feeling and delicate mind—yet to the mass of the people it is not so afflicting as the loss of the other moral virtues, which in large governments, are exchanged for the fashionable vices of him who *presides:*—Under Caligula, the Roman legions were not ashamed to adorn their helmets with cockle-shells in triumph for their expedition against Britain, in which, they never ventured to leave the shores of Gaul—this Prince—the degenerate son of the adored Germanicus, happened to be a poltron.—During the reign of Nero, fiddling—dancing—singing—burning cities—plundering States—perfidy and assassination were the manners of the age, and discover the motley mind of this monster of levity and vice.—Domitian who like every man that from weakness—vicious heart—or the allurements of pleasure, deserts the paths of virtue—hated cordially those examples of merit which he could not imitate. Tacitus informs us, that during his life—*virtue became a death warrant*—Philosophy fled—Pliny sat himself down quietly to compose a grammar—the only work of science then safe—in short, nothing was honourable or profitable but assassinations, informations, and all sorts of corruptions and pollutions.

A Farmer.

(*To be continued.*)

11 April 1788

(*Continued from our last.*)

5.1.104 Human misery is wound up to its highest pitch in this last stage of corruption, to which the social union can arrive:—At length the poor, wretched beings, who, let whatever be the change, and in every preceding gradation of government, have invariably fallen from bad to worse—turn their weary

eyes, from a world which presents so frightful a prospect—to the world of hope,—the kingdom that is to come hereafter—the only solace and comfort of those who are miserable here;—there all the fond images of equality, which men are fated ever to retain, are once more revived—Scenes of never-ending bliss are painted in the most delightful colours—the imagination grows warm with the prospect—mad with the hopes of celestial happiness, the souls of all men seem anxious to take their flight, to their Omnipotent Author—the Sovereign Legislator of nature—who, peerless and above all, dispences equal law to willing minds:—The people flock in crouds to hear preachers—who, exalted by the presence of numerous and passionate audiences, are elevated into flights of native eloquence, surpassing the strains of the most studied oratory:—The people mind nothing but preaching; the things of this miserable world, are despised when put in competition with the joys of Paradise—agriculture is neglected—famine ensues—government is at length roused for want of plunder and a supply of luxuries—the sword of coercion is drawn—but it increases the phrenzy—One martyr makes fifty converts—such was the first rise of the Christian religion, as it is exactly and pathetically described by the historic pen of Ammianus Marcellinus:[69]—The empire torn by intestine convulsions becomes an easy prey to any bold invader.

Thus it is that barbarity—cruelty and blood which stain the history of religion, spring from the corruption of civil government, and from that never-dying hope and fondness for a state of equality, which constitutes an essential part of the soul of man:—A chaos of darkness obscures the downfal of empire, intermixed with gleams of light, which serve only to disclose scenes of desolation and horror—From the last confusion springs order:—The bold spirits who pull down the ancient fabric—erect a new one, founded on the natural liberties of mankind, and *where civil government is preserved free, there can be no religious tyranny*—the sparks of bigotry and enthusiasm may and will crackle, but can never light into a blaze.— 5.1.105

The truth of these remarks appear from the histories of those two great revolutions of European government, which seem to have convulsed this earth to the centre of its orb, and of which we have compleat record—The Roman and the Gothic, or as it is more commonly called the feudal constitution:—In the infancy of the Roman republic, when enterprizing and free, their conquests were rapid, because beneficial to the conquered (who were admitted to a participation of their liberty) their religion, although devoid, was not only unstained by persecution, but censurably liberal—they received without discrimination the Gods of the countries they subdued, into the list of their deities, until Olympus was covered with an army of demigods as numerous as the legions of Popish Saints; and we find the Grecian divinities adored with more sincere piety at Rome, than at Athens.—Rome was then in the zenith of her glory—in the days of her wretched decline—in the miserable reigns of Caracalla, Eliagabalus and Commodus.—Ammianus and others, inform us that the Christians were 5.1.106

butchered like sheep, for reviving the old exploded doctrine of a future state, in which Emperors and Senators were to be placed on a level with the poorest and most abject of mankind:—And in the succeeding despotisms when christianity became the established religion, it grew immediately as corrupt in its infancy, as ever it has proved at any period since—the most subtle disquisitions of a metaphysical nature became the universal rage—the more incomprehensible—the more obstinately were they maintained, and in fine, the canonized Austin or Ambrose, (I forget which) closed his laborious enquiries, with this holy position—*that he believed, because it was impossible*.[70] At length the great question, whether the three persons of the divinity, were three or one, became publickly agitated, and threw all mankind into a flame—Councils after councils, composed of all the wisdom of the divines, were assembled, and at length the doctrine that three were one prevailed, and such would have been the determination had it been proposed that three were sixteen—because misery is the foundation, upon which error erects her tyranny over the vulgar mind.—After this determination the arm of the Magistrate was called in, and those poor misled Arians who were still so wicked as to imagine that three must be three, were not only declared guilty of a most abominable and damnable heresy, but were thenceforth exterminated by fire and sword.

5.1.107 In the first age of the *Gothic* government, those free and hardy adventurers, deserted their Idols and embraced the doctrines of Christianity with ardent sincerity:—The King and a large majority of a nation, would be converted and baptized with as much celerity as the ceremony could be performed—but still liberty in the temporal, secured freedom in the spiritual administration: Christians and Pagan citizens lived together in the utmost harmony—Those bold and hardy conquerors would never listen to Bishops who advised persecution, and held in sovereign contempt all those metaphysical distinctions with which a pure religion has been disgraced, in order to cloak villainous designs and support artful usurpations of civil powers in feeble and turbulent governments. The Gothic institutions were however much sooner corrupted from internal vices than the Roman, and the undeniable reason was, that in the former government by representation was admitted almost coeval with their first inundations;—whereas with the Romans, the democratic branch of power, exercised by the people personally, rendered them invinsible both in war and peace—the virtue of this internal institution could only be subdued by the greatness of its external acquisition—extensive empire ruined this mighty fabric—a superstructure, which overshadowed the then known world, was too mighty for the foundation confined within the walls of a city—the wealth imported by the Scipios from Spain and Afric, and by Flaminius, Lucullus, Sylla and Pompey, from the East, enabled the *few* to corrupt the *many*—a case that can never exist but where the legislative power resides exclusively in the citizens of the town—The Roman republic then became diseased at the heart, but as it was ages in forming, so it required ages of corruption to destroy a robust con-

stitution where every atom was a nerve: It was not so with the Gothic constitution, mortal disease soon made its appearance there—Civil liberty was early destroyed by the insolence and oppressions of the great—The temporal power availed itself of that spiritual influence which nature has given religion over the hearts of men—A religion, the divinity of which is demonstrable by reason alone, unassisted by revelation became the corrupt instrument of usurpation.—Those who were the authors of the disorders which disgraced civil government, cut the reins of ecclesiastical persecution: And an universal and tyrannic confusion was mingled with absurdities that excite both ridicule and horror. We see a Duke of Gandia (who was betrayed and assassinated by that monster of perfidy Caesar Borgia, the bastard of the infamous Pope Alexander the VIth) in the last moments of his existence, begging the cut throat son, that he would intercede with his father, the Pope, in favour of his poor soul, that it might not be kept long in purgatory, but dispatched as soon as possible to Heaven, to dispute the infallibility of those vice-gerents of God, who generally patterned after the devil, was considered as an heresy more damnable than blaspheming the most high. Religious tyranny continued in this state, during those convulsions which broke the aristocracies of Europe, and settled their governments into mixed monarchies: A ray of light then beamed—but only for a moment—the turbulent state and quick corruption of mixed monarchy, opened a new scene of religious horror—Pardons for all crimes committed and to be committed, were regulated by ecclesiastical law, with a mercantile exactitude, and a Christian knew what he must pay for murdering another better than he now does the price of a pair of boots: At length some bold spirits began to doubt whether wheat flour, made into paste, could be actually human flesh, or whether the wine made in the last vintage could be the real blood of Christ, who had been crucified upwards of 1400 years—Such was the origin of the Protestant reformation—at the bare mention of such heretical and dangerous doctrine, striking (as they said) at the root of all religion, the sword of power leaped from its scabbard, the smoke that arose from the flames, to which the most virtuous of mankind, were without mercy committed, darkened all Europe for ages; tribunals, armed with frightful tortures, were every where erected, to make men confess opinions, and then they were solemnly burned for confessing, whilst priest and people sang hymns around them; and the fires of persecution are scarcely yet extinguished. *Civil and religious liberty are inseparably interwoven–whilst government is pure and equal—religion will be uncontaminated:—The moment government becomes disordered, bigotry and fanaticism take root and grow—they are soon converted to serve the purpose of usurpation, and finally, religious persecution reciprocally supports and is supported by the tyranny of the temporal powers.*

A Farmer.

(*To be continued.*)

(*Continued from our last.*)

5.1.108 Although both civil and political liberty may be truly said no longer to exist in Europe—yet from one effect of the *feudal institutions,* that enlightened part of the globe, has in a great measure, recovered from the disorders occasioned by their irreparable loss:—What I allude to is the division of that quarter of the world into a multitude of separate States and sovereignties, and that extreme attention to the preservation of each and to the balance of power, which has become a fundamental law of the whole; this secures the influence of political moderation, or a species of *fœderal liberty,* which is the next blessing that government can afford; and certainly were wise men obliged to confine themselves to the choice of one alternative—fœderal or national liberty—they would prefer the former—whilst the influence of that exists, it must support the substance in a great measure of the latter, although the forms should no longer remain—But when that ceases, national liberty, which includes both civil and political freedom, must soon expire.—The history of mankind furnishes a series of invariable and frightful examples of this.—The Roman republic included a variety of other republics, States and Kingdoms living in a perfect liberty, and according to their own laws; this variety and contrariety of interests seemed to promise internal freedom, independant of external influence—But the time of their delirium had arrived—after the conquest of Hannibal and the peace which the first Scipio made with the Carthaginians—that immortal statesman and hero gave his countrymen this remarkable advice—to restore Carthage, as an enemy worthy of Rome—but the opinion of that stupid old fool Cato, the censor, prevailed as more consonant to the vulgar level of men's judgments, and *delenda est Carthago—Carthage must be destroyed,* became the motto of the day—the consequence of this political advice was, that Carthage being razed to the ground, and no enemy existing contiguous to Rome, which she could dread—not all her internal institutions—not all the variety of interests, which a multitude of almost independant States afforded, could prevent her speedy destruction—*ruit mote sad—she fell by her own weight*—and their liberty became such liberty as a Nero and the Praetorian bands thought fit to distribute. The Turkish empire is at this day extended over a multitude of kingdoms, States—even democratic and aristocratic republics, oligarchies, and every species of institution which the inventive genius of man has created—but I do not see that it has moderated its despotism.—Spain still contains in her bosom that very extensive and well formed republic Biscay—but the slavery of Spain has since the reign of Charles the Vth, nearly depopulated the finest part of Europe.—France contains an extensive free country, which would not submit to the general government but on conditions that have hitherto secured them a superior

degree of happiness—I mean Britany, which was annexed to the crown by the marriage of Anne, of Bretagne, with Lewis the VIIth. There was a democracy until lately within the territory of France, Marseilles—A French gentleman once told me, *we had one republic in France, which made one very great noise, at last the King he did build one little citadel in the middle of it, and then he teach them republicans how to behave themselves*—The melancholy truth is, that the internal institutions of an extensive empire signify nought—the principle that the convenience, the rights and interests of a part must give way to what is called the good of the whole, unhinges every species of just and equal government, because it is a principle that has no limits.[71]

Still however the division of Europe into small independant States, pre- 5.1.109
serves a degree of social happiness very different from what exists in other parts of the world—we find them injured by foreign war—but the moderation of a political influence exempts them from the desolations of those internal commotions which lay waste two extensive empires—Their wars too are becoming more mild and less frequent than formerly, and certainly if they could not be entirely prevented, they might be quickly suppressed by keeping up an annual Congress of diplomatique ministers, instead of their present imperfect mode of negociation, which defective as it is, has notwithstanding rendered peace more durable, and war less destructive; the only satisfactory reason their greatest patriots have given for neglecting, what at first view appears so important an improvement, is that terror with which they justly view, any thing in the shape of general government, which they universally admit to be the greatest curse that can befal mankind:—The enlightened statesmen of the old world, have imprinted on their minds the wisdom of the ancient fable, which I shall now repeat to the Americans—"The lion, the king of the beasts, gave out that he was sick—he confined himself to his den, and his friends did not stick out to say that he must die of that disorder—all the beasts went to pay their court and assist him but the fox—at length the lion appeared abroad and took Reynard roundly to task, why he had not come to see him, when he was so ill—the fox, who in fable is the emblem of wisdom, made this memorable reply—In truth I did intend to pay my respects to your majesty, *but when I came near your den, I saw all the feet pointing in and none coming out*"—So invariably have powers been travelling to the centre, never again to return to those who bestow them.

At present as a recompence for the evils of occasional broils, Europe has 5.1.110
the consolation to reflect, that she is secure from the terrible despotisms which reign over the other three quarters of the globe.—Those States who admit the sanction of the laws of nature and nations form as it were a *great fœderal republic*, and the balance of power, even under an imperfect system, has prevented those great revolutions and shocks which sweeping myriads of mortals at a blow, degrade mankind in the eye of philosophy, to a level with the ants and other insects of the earth—negociation unnerves the

arm of conquest, and the genius of a Marlbrough, an Eugene, a Saxe and Turenne, is desplayed in harmless counter-marches, which in Asia, or even Europe, some centuries back, would have formed an Alexander, a Caesar, a Gengis Khan and a Tamerlane.

5.1.111 To this balance of power, France has long owed her safety, and that only can save her at this particular and awful crisis of turbulence; the despotism of Constantinople would soon reign at Paris, but that the territory of France is not sufficiently large for such a tyranny, and she is surrounded by numerous, warlike and independant sovereignties—the influence of manners, which their philosophers boast of, as one great security, if not ironically introduced, is certainly but an empty sound—their manners—reputation and every thing, have been long regulated by the capricious vices of the Prince who sat on the throne—but France is not sufficiently extensive to defend her empire by such immense deserts, as surround the despotisms of Turkey, Persia, China and Morocco, and secure them from foreign conquest—If the Prince, in France, was to destroy all their fundamental laws, which by what they now call their constitution, he evidently may do and subject his subjects to the caprice of a Turkish yoke, which 200,000 standing troops will accomplish for him whenever he pleases:—The inevitable consequence would be, that he would only subject himself and his slaves to instant conquest and partition among his neighbours.—No Prince of France will therefore ever be permitted to attempt this, whilst the present balance of power remains.

A Farmer.

(*To be continued.*)

22 April 1788

(*Continued from* No. 368.)

5.1.112 It remains to apply the foregoing principles to the American States—It is now evident, that they are not to be fixed as a constellation to give light to revolving ages—they have blazed for a moment like meteors in a troubled sky: Scarce has peace secured them the independance they sought, when a mighty revolution is to annihilate their separate and independant sovereignties, and to embrace them in the wide arms of one general government; it is impossible that the free citizens of these States could listen for a moment, to such a tremendous and awful change, but from some real defects which they have experienced in their separate constitutions—That there are such cannot be denied—but still the author has no hopes that the citizens of these States will ever be again so happy as they were under the government of Great-Britain and since the revolution—The state of society

before the late war was remarkably mild and moderate, and what is uncommon, we rather combatted the theory of tyranny than the practice[72]—since the war we have been much embarrassed by a great encrease of private, and the creation of an enormous public debt, with its attendant paper securities, the corrupting influence of which would contaminate a society of angels; our new elevation among the nations of the earth has opened to our principal citizens unbounded prospects of national splendor and private preferment, which lay dormant in our former dependant situation—all these, and a variety of other causes have combined to disturb the public tranquility and vitiate our social happiness.—We have no opportunity of comparing our situation but with that which existed before the late revolution, and from this we conclude our forms of government are defective, without considering our change of situation, or without reflecting how few countries in the world are so happy as we are at this moment—notwithstanding we are in the most disturbed of all situations of society, that is on the eve of a great revolution; suppose such a change was now impending in any other country in the world—a change opening such unlimited views to some and so detrimental to other individuals, involving the interests and agitating the passions of every citizen—could so much moderation and candor be expected—the general abhorrence which we all entertain of the violences of the mad partizans of the new system, evinces the mild state of our present institutions.

Notwithstanding this, no man is more thoroughly convinced than the 5.1.113
Farmer, that there is not a government in the confederacy perfect, or indeed founded on solid fixed principles.—Pennsylvania has the boldest direction to a happy theory of all the new contrivances—but still it is fundamentally defective, and it is said that they are daily weakening in practice the great virtue of their institution, instead of substantiating so glorious an idea—The four New-England States were practically the most solid in their formation, until two of them were spoiled by their nasty new ginger-bread work—and yet they originally required amendments—their town meetings, which were the essential pith and marrow of their constitution seem rather to have been regulated by manners, than substantiated by proper and legal powers; as for the others they were all begun in the middle and formed without materials necessary for the work—they remain and must remain governments on paper, substantiated by anarchy and misrule—*New-York* indeed, by an excess of inverted ingenuity, has contrived to make something like a real government, that would for a length of years secure their political freedom—On the other hand *Georgia* is utterly incomprehensible—it appears at first sight all body and no head or feet, and on nearer view it has no body either—it is in fact a lusus naturae in the political world—However, should they all escape the stroke that now impends, which is hardly to be expected, it is in my opinion utterly impossible for nine out of thirteen to prolong their feeble existence for twenty years without considerable

alterations.—I see nothing that could greatly injure New-York, Connecticut or Rhode-Island. Were I to give a model of a perfect government, it would not vary greatly from the Connecticut charter—the amendments would be all in the town-meetings—Rhode-Island lays under a popular odium—all governments have their inconveniences, but I should be apt to ascribe those of Connecticut and Rhode-Island to their paper securities and other evils of the late war.—When parties run high, popular odium is a very uncertain test of truth, and *audi et alteram partem—hear both sides,* is the best maxim of political and moral justice. However the conduct of Rhode-Island with regard to paper money, as we hear it, is incomprehensible—What shall I say of Pennsylvania? When I view this bold effort of the human understanding, I am struck with admiration and surprize at the masterly hand of him that broke through the mounds of prejudice and education, guided by the glimmering of a distant light; he adventured boldly into the realms of truth, but the brilliant resplendence dazzled his sight—he found himself alone and unsupported, and he retired precipitately to his companions, who were groping in error and darkness[73]—Let Pennsylvania pursue with energy and propriety the ray of light, which beams through the mass of her constitution; let her establish county meetings of *freeholders,* to whom one third of her legislature may refer a contested law for the revision of the great body of the people *by actual vote*—establish county seminaries of learning and similar institutions to promote true patriotism and true knowledge, and she will last the envy of mankind until time shall be no more—As it is she is a child of nature, and strong convulsions must attend her destruction. As to all the other institutions of this continent, they are governments of the people, and yet the people are excluded from all share in the government.[74] They can only be supported by the *few* individuals who are objects of elections, maintaining a disinterested preference of the public good to their private convenience—for it must be ever held in view, that the interest of the *few* is opposed to the public interest, but the interest of the *many,* is the public interest—on which great distinction the weakness of representative government depends—The elected few are tempted to corruption by all the emoluments of government, and by that plunder which public disorder affords—they are screened from punishment by making legislation subservient to their interested purposes, and there is no control but public manners and the propinquity of our independant States, which enforces moderation by interest, emulation and example[75]—Public manners are daily corrupting by a fell avarice, which is the canker worm of public and private virtue—the facility of gratifying avaricious views, by prostituting legislative authority, renders intrigue the only profitable quality in an age of venality. Profit, honor and distinction are all inseparably interwoven, and a man of deep intrigue must be necessarily, the most respected character in perverted governments—if virtue gets into office, rotation wheels it out, hated and despised.—This view which I believe to be in a great measure just, although

the principles are but develloping, discover our systems to be fundamentally wrong, did not the proposed revolution bear a more fatal testimony; the truth is that we aimed at, and still aim at premature public splendor and private luxury, forgetting that bodies politic, like natural bodies have their duration of manly vigor and the decline of age, prolonged and regulated by the length of years in which they have been arriving at maturity.—We wanted to be every thing at once—that is what we now wish, and in the event we shall be nothing or worse than nothing; we strived to patch up the ruined fabric of the British constitution for our use, and rushing headlong to our object, we did not discover the precipices that lay in our road—we never reflected, that we had none of those distinctions of ranks which preserve that government—that the state of our society was altogether different—and that we had only the wishes, but none of the means.

A Farmer.

(*To be continued.*)[76]

1. This essay was written in reply to a pamphlet by Aristides, the pseudonym of Alexander Contee Hanson, a Maryland legislator and judge. The pamphlet is reprinted in Ford, *Pamphlets* 217–57.

2. Aristides had argued, near the end of his pamphlet: "The characters of the principal advocates and opponents are well known. To him who declines not a public avowal of his sentiments, some credit is due, for his candour; and he is entitled to your patient attention. But he that prefers a secret corner, for dealing forth his objections, and expositions, should be heard with caution and distrust. It is in a land of slavery alone, where truth shuns the open day." Ford, *Pamphlets* 254. Later, Aristides explained that his signature is equivalent to "a public avowal of the author." *Maryland Journal and Baltimore Advertiser* 4 March 1788. This controversy is continued in subsequent exchanges, with A Farmer finally leaving his name with the printer and both writers expressing their determination to resist personal attacks. See VI, 5.1.90. For a similar controversy see Philadelphiensis I, 3.9.1.–6.

3. Turning, as he said, "to attack the whole body of anti-federalists in their strong hold," Aristides had made the common Federalist argument that the reservations of individual rights that are appropriate where a government is given a general grant of power to do what it thinks necessary are not necessary or appropriate where the powers of government are so defined that such government cannot, "without manifest usurpation, exert any power not expressly, or by *necessary* implication, conferred by the compact." He went on to the argument that the insertion of a bill of rights would, at least, have done no harm. Among other things, "the very appearance of it might raise more clamour than its omission,—I mean from those who study pretexts for condemning the whole fabric of the constitution.—'What! (might they say) did these exalted spirits imagine, that the natural rights of mankind depend on their gracious confession. . . .' " Ford, *Pamphlets* 241–43. Aristides defends his argument against what he contends to be A Farmer's misrepresentation, in the *Maryland Journal and Baltimore Advertiser* 4 March, 1788. (This reply is not reprinted by Ford; A Farmer makes a somewhat feeble defense in his sixth essay, 5.1.84–87). Later in this reply, however, Aristides makes this interesting (if dubious) argument. "It is indeed impossible to divine, what laws it may frame, in pursuance of its particular powers. It is also impossible to say, what laws may, at all times, be 'necessary and proper.' But this we may say,—that, in exercising those powers, the Congress cannot legally violate the natural rights of an individual. And this again is all you could say, were there an express constitutional avowal of those rights." See Mason 2.2.1 n. 1.

4. Filmer does assert this doctrine in his *Patriarcha* passim., but Aristides does not. One of Aristides' defenders, A Plebeian, writing in the *Maryland Journal* on 14 March, presents a good statement of several elements of the Federalist view of the bill of rights question: "To alarm the apprehensions of the croud with an intended destruction of their *bill of rights,* when, by the constitution, the executive power is not only liable to impeachment, but so circumscribed, checked and limited, that it is scarce reasonable to imagine it can err, can be supposed to be nothing better than the last resource of a disappointed incendiary. In governments like Britain, where the executive is hereditary, and may probably fall into the hands of a person in every respect disqualified, a bill of rights is considered as necessary to guard the people against the encroachments of the crown. Our constitution hath, in this respect, freed us from the necessity of such a security. Should we hereafter be obliged to have recourse thereto, how does it appear beyond our reach? So long as we are sensible of being the origin of all power; so long as we resolve to be a free, virtuous and independent people; so long shall such principles be the best bill of rights for our security; and so long shall we be able to command it from any delegated administration whatever."

5. *Debates of the House of Commons, from the Year 1667 to the Year 1694,* collected by the Honorable Anchitell Grey, Esq. (London 1769) X.

6. John Somers, *A Vindication of the Proceedings of the Late Parliament of England* (1689); from *A Collection of Scarce and Valuable Tracts* (London 1748) II, 341–54.

7. Bracton had the king subject to *God* and the law; *On the Laws and Customs of England,* "The King has no equal," f5b.

8. Aristides replies that "An act to authorize general warrants would be agreeable to no power conferred by the constitution" and "the party injured will most clearly have redress in a state court." *The Maryland Journal and Baltimore Advertiser* 4 March 1788. See VI, 5.1.86. On a bill of rights as a standard of governmental action, see Agrippa VI, 4.6.23 n. 14; on the relevance of state bills of rights, see above Brutus II, 2.9.32 n. 23.

9. The subject of jury trial is treated at length in IV, 5.1.61 ff.

10. A Farmer may be referring to Thomas McKean; see McMaster and Stone 252, 272. See the arguments to the same effect by James Wilson (252–54; 313–15); James Bowdoin, Elliot II, 87; The Landholder, Ford, *Essays* 163; A Citizen of New York, Ford, *Pamphlets* 77; Remarker, Boston *Independent Chronicle* 27 December 1787; *The Federalist* no. 84. For an explicit statement to the contrary, see below Impartial Examiner 5.14.5, 10.

11. Thus A Farmer accepts a fundamental Federalist proposition, the overriding danger of majority tyranny, and makes it the basis for a contra-Federalist argument on a bill of rights. Cf. *The Federalist* nos. 10, 48, and 49, and James Madison to Thomas Jefferson, 17 October 1788, Madison, *Writings* (ed. Hunt) V, 269–75. See Agrippa XVI, 4.6.73.

12. "For want of some plain and obvious distinctions, there has been vented so much senseless clamour against standing armies, that they are become a political bugbear." "In fine, I consider this grand objection, as a mere pretext for terrifying you, like children, with spectres and hobgoblins." Ford, *Pamphlets* 234–35.

13. In a footnote dealing with Montesquieu's views of representation in a confederation, Aristides said: "Could the immortal spirit of Montesquieu revisit the earth, and behold the model now offerred to America, how quickly would his favorite republic [Lycia] sink in his estimation. In a new quarter of the globe scarcely heard of by the greater part of Europeans in his day, and since the commencement of the present century, he would see men who have obtained a perfection in the science most conducive to human happiness, in that study which was the principal occupation of his life, in which his predecessors had acquired only a few glimmering lights, and of which it was reserved for him to develope most of the true first principles." Ford, *Pamphlets* 223–24. See also *The Federalist* no. 9. Cf. [New Hampshire] Farmer 4.17.13 n. 8.

14. The reference seems to be to Peter Kolb, *The Present State of the Cape of Good Hope*, trans. G. Vido Medley (London 1731) I; but no such observation is to be found here.

15. On the dangers of innovation see Republican Federalist 4.13.14–15; [New Hampshire] Farmer 4.17.13 n. 8.

16. Governor Huntington argued, on 9 January 1788, that history shows that it is dangerous to trust supreme power to one man and that it is dangerous as well as inconvenient for the people of a large community to exercise in person the supreme authority. "Hence arises the necessity that the people should act by their representatives; but this method, so necessary for civil liberty, is an improvement of modern times." Elliot II, 198.

17. Cf. Mercer 5.5.11; *The Federalist* no. 63, 427–28. For other Anti-Federalist discussions of representation see Federal Farmer II, 2.8.15 n. 11.

18. *Discourses* I, 55.

19. Cf. Mercer 5.5.9; Farrand II, 284. For other Anti-Federalist discussions of the natural aristocracy see Federal Farmer VII, 2.8.97 n. 64.

20. "There is one universal division in all states, which is between the innocent and the criminals; and another between such as are, in some measure, contented with what they possess by inheritance, or what they expect from their own abilities, industry, or parsimony; and others, who, dissatisfied with what they have, and not trusting to those innocent ways of acquiring more, must fall to others, and pass from just to unjust, from peaceable to violent. The first desire safety, and to keep what they have; the second are content with dangers, in hope to get what others legally possess: one loves the present state and government, and endeavors to secure it; the other desires to end this game, and shuffle for a new: one loves fixed laws and the other arbitrary power; yet the last, when they have gained enough by factions and disorders, by rapine and violence, come then to change their principles with their fortunes, and grow friends to established orders and fixed laws." Sir William Temple, *Of Popular Discontents*, sec. 1, *Works* (1754) II, 364–65.

21. For other expressions of this theme see Federal Farmer IV, 2.8.58 n. 44.

22. This reference has not been identified.

23. Cf. Mercer 5.5.10.

24. Cf. Farrand II, 284–85. Cf. Federal Farmer XIV, 2.8.178 ff.; Henry 5.16.14; Monroe 5.21.24–27.

25. Ford, *Pamphlets* 234–35. See Adams, *Defence*, preface (*Works* IV, 288). For references to other Anti-Federalist discussions of standing armies see Brutus VIII, 2.9.97 n. 66.

26. James Wilson, "Address to the Citizens of Philadelphia," 24 October 1787, McMaster and Stone 145–46; see Brutus IX, 2.9.110 n. 73.

27. John Williams, *The Rise, Progress and Present State of the Northern Governments* (London 1777) I, bk. 3, ch. 2, pp. 600–601.

28. Ibid., I, bk. 2, ch. 2, pp. 298–315.

29. Alexander Pope, *Essay on Man* III, line 303. See Federal Farmer I, 2.8.1 n. 3.

30. The section from here to II, 5.1.46, and the last paragraph of this essay (5.1.49) were included in the pamphlet edition of Luther Martin's *Genuine Information* published at Philadelphia by Eleazer Oswald in 1788.

31. "A limited monarch, with the means of maintaining, at all times, an army devoted to his will, might soon trample on the natural and civil rights of his subjects. Could the present congress find means of augmenting the force, which it now maintains, which of you, on that account, would experience the slightest anxiety?" Ford, *Pamphlets* 234.

32. On the confusion of names, see above Martin, 2.4.43 n. 12. The discussion that follows here may be compared with that of Publius on the utility of union, *The*

Federalist nos. 2–14. On Anti-Federal opposition to consolidation, see Federal Farmer I, 2.8.10 ff. and n. 9; *Plebeian* 6.11.15 n. 9.

33. Carlyle quotes an aphorism from Montesquieu, "Happy the People whose Annals are blank in History Books." Thomas Carlyle, *History of Frederick II of Prussia* IV, bk. 16, ch. 1. See also J. J. Rousseau, *The Emile* (Everyman, ed.) 199; Benjamin Franklin, *Poor Richard's Almanack* 1740.

34. See V, 5.1.74–81.

35. Letter from John Francis Mercer to Thomas Jefferson, 27 October 1804: "I lamented also that the great and indeed only security of a confederation of Republics was destroyed by so far consolidating the general Government as to sink the distinctive spirit of separate States. A diversity of State-interests, prejudices and parties (for parties will exist in some degree where there is freedom) acting without uniformity and frequently counteracting each other, leaves the great majority of the Component Members sound and cool to repress the agitation of a part." John Mercer Garnett, "John Francis Mercer," *Maryland Historical Magazine* September 1907, p. 210.

36. See 5.1.89–111; cf. Mercer 5.5.5–6; cf. also [Maryland] Farmer VII, 5.1.108–11.

37. This important and rather unusual argument should be compared with *The Federalist* nos. 9, 10, 15, 23.

38. The original reads, "by 3dly. The Free-booters . . ."

39. Virgil, *Ecologues* III, 5–6: "The sheep is milked twice per hour, and the sap of the flock and the milk is stolen from the lambs."

40. Cf. letters from John Francis Mercer to Thomas Jefferson, 27 October 1804: "Parties in politics, like sects in Religion, can only be divested of their danger by multiplying their number and diversifying their objects. Now one universal sympathy pervades the whole Continent on every public question; the individuality of States is solv'd into two great parties, which, as they alternately command the majority, will inflict increasing injuries on each other, until violence and rancour, with their concomitants, anarchy and bloodshed, can admit of no other remedy than the bayonet of a military despot." John Mercer Garnett, "John Francis Mercer," *Maryland Historical Magazine* September 1907, p. 210.

41. See I, 5.1.14. On the importance of the jury, see above, vol. 1, pp. 18–19.

42. Tacitus, *Germania,* ch. 11, line 1. "On affairs of smaller moment, the chiefs consult; on those of greater importance, the whole community."

43. J. L. DeLolme, *The Constitution of England* I, ch. 11. DeLolme is describing the courts of equity.

44. Blaise Pascal, *Pensées,* La Fuma, no. 413.

45. *The Spirit of Laws* XI, ch. 6.

46. Cf. *The Federalist* nos. 71–72.

47. Farrand II, 284.

48. Cf. Mercer 5.5.11. See Centinel I, 2.7.7 n. 4.

49. DeLolme, *The Constitution of England* II, chs. 5–8. See Centinel I, 2.7.7 n. 4.

50. Cf. references to Switzerland noted in Old Whig IV, 3.3.30 n. 22.

51. This reference has not been identified.

52. William Coxe, *Sketches of the Natural, Civil, and Political State of Swisserland,* 2d ed. (London 1780) 274–75; cf. 51–53, 124–25.

53. Cf. John Adams' less favorable view of San Marino, in his *Defence* I, letter 3 (*Works* IV, 308–10).

54. See Machiavelli, *Discourses* I, ch. 6.

55. The reference is presumably to Aristides' essay in the *Maryland Journal* 4 March 1788.

56. See I, 5.1.4–5 and n. 4.

57. See the remark to this effect by Thomas McKean in the Pennsylvania ratifying convention, 28 November 1787; McMaster and Stone 252.

58. The reference may be to William Paca, former governor of Maryland, although no statement by Paca linking Aristides and Filmer has been found. (Aristides said in his essay of 4 March, "One other person has indeed discovered a congeniality between Filmer and Aristides. Perhaps the Farmer is only paying his court. If so, Aristides will freely forgive the *injury*.")

59. ". . . *except*," Aristides went on, "*only the cases created by or under the proposed constitution, in which, as they do not now exist, the inferior federal courts will have exclusive jurisdiction.*" Ford, *Pamphlets* 238. See I, 5.1.12. Aristides was right in expecting that the state and federal courts would have concurrent jurisdiction in many areas, but he was wrong in expecting that actions begun in state courts could not be transferred to a federal inferior or supreme court. (Ford, *Pamphlets* 237–38.) Given this latter view, the notion of concurrent jurisdiction is, of course, much more open to the criticism of A Farmer than the present system of concurrent jurisdiction subject to final determination by the federal Supreme Court.

60. The full remark is: "Suppose now a federal officer under colour of his legal authority, to commit a daring outrage; may not the party injured obtain redress in a state court?—With submission to all Farmers, and antifederalists, I think, he may.—If a suit be brought, and the defendant attempt to justify, there will be two points for decision.—Did the officer act agreeably to law? Is such law agreeable to the constitution?—In Like manner, were there a federal bill of rights, the question before the court would be, is such law agreeable to the bill of rights?—I am under no fear, that any sound lawyer, of a good moral reputation, will say, that, on the defendant's barely producing a federal commission, the action in a state court must of course be dismissed. Away then with this ridiculous bugbear, fit only to alarm minds, on which no science has ever dawned." *Maryland Journal* 4 March 1788.

61. Ford, *Pamphlets* 234.

62. Cf. *The Federalist* no. 10.

63. *The Spirit of Laws* VIII, ch. 3.

64. Horace, *Epistles* I, ch. 2, line 14.

65. This reference has not been identified.

66. See Helvétius, *De L'Esprit*, (1758) III, xviii.

67. William Coxe, *Travels into Poland, Russia, Sweden and Denmark* I, ch. 4.

68. Suetonius, *Lives of the Twelve Caesars*, Caius Julius Caesar, sec. 52.

69. Ammianus Mircellinus.

70. Rather, Tertullian, *On the Flesh of Christ*, ch. 5.

71. Cf. above, *Agrippa* VII, 4.6.26; XII, 4.6.58 n. 31.

72. Cf. Mercer 5.5.12.

73. The reference is probably to Benjamin Franklin, who presided over the Pennsylvania constitutional convention in 1776. Mercer certainly would have known, from his own observation and from reports of the proceedings prior to his arrival on 6 August 1787, of the silence and lack of support that met several of Franklin's proposals in the federal Constitutional Convention; he arrived too late to hear Franklin describe the Convention "groping as it were in the dark to find political truth" (Farrand I, 451), though he may well have heard or read reports of that speech, or even seen the manuscript of the speech itself.

74. Cf. *The Federalist* no. 63, 428.

75. Cf. Farrand II, 284.

76. There appear to have been no more essays published.

Essay by A Farmer and Planter

MARYLAND JOURNAL
1 April 1788

This essay,[1] written shortly before the election of delegates to the state ratifying convention, attacks the Constitution as a scheme for aristocracy fostered by the rich men. A Farmer and Planter is particularly fearful of the oppressive consequences of the powers to tax and to use the militia to enforce the laws. He sums up a great deal of Anti-Federal sentiment in his call, "Be wise, be virtuous, and catch the precious moment as it passes, to refuse this new-fangled government, and extricate yourselves and posterity from tyranny, oppression, aristocratical or monarchical government." (5.2.3).

1. Bernard Steiner suggests that there were several articles by A Farmer and Planter, but all of his references are to the article here, and I have found no others. "Maryland's Adoption of the Federal Constitution," *The American Historical Review* October 1899, p. 38 n.5.

To the Farmers and Planters of Maryland

Fellow-Citizens,

5.2.1 The time is nearly at hand, when you are called upon to render up that glorious liberty you obtained, by resisting the tyranny and oppression of George the Third, King of England, and his ministers.—The first Monday in April is the day appointed by our assembly, for you to meet and choose delegates in each county, to take into consideration the new Federal Government, and either adopt or refuse it. Let me entreat you, my fellows, to consider well what you are about—Read the said Constitution, and consider it well before you act—I have done so, and can find that we are to receive but little good, and a great deal of evil—Aristocracy, or government in the hands of a very few nobles, or RICH MEN, is therein concealed in the most artful wrote plan that ever was formed to entrap a free people. The contrivers of it have so completely entrapped you, and laid their plan so sure

and secretly, that they have only left you to do one of two things; that is either to receive or refuse it. And in order to bring you into their snare, you may daily read new pieces published in the News-Papers, in favour of this new government; and should a writer dare to publish any piece against it, he is immediately abused and vilified.

Look around you and observe well the RICH MEN, who are to be your only rulers, lords and masters in future! Are they not all for it? Yes! Ought not this to put you on your guard? Does not riches beget power, and power, oppression and tyranny? 5.2.2

I am told that four of the richest men in Ann-Arundel County, have offered themselves candidates to serve in the Convention, who are all in favour of the new Federal Government;[1] let me beg of you to reflect a moment on the danger you run—If you choose these men, or others like them, they certainly will do every thing in their power to adopt the new government—Should they succeed, your liberty is gone for ever; and you will then be nothing better than a strong ass crouching down between two burthens—The new form of government gives Congress liberty at any time, by their laws, to alter the state laws, and the time, places and manner of holding elections for representatives; by this clause they may command, by their laws, the people of Maryland to go to Georgia, and the people of Georgia to go to Boston, to choose their representatives—Congress, or our future lords and masters, are to have power to lay and collect taxes, duties, imposts, and excises—Excise is a new thing in America, and few country farmers and planters know the meaning of it; but it is not so in Old England, where I have seen the effects of it, and felt the smart. It is there a duty, or tax, laid upon almost every necessary of life and convenience, and a great number of other articles. The excise on salt in the year 1762, to the best of my recollection, in England, was 4s. sterling per bushel, for all that was made use of in families, and the price of salt per bushel about 6s. sterling, and the excise 4s. 6d. on every gallon of rum made use of. If a private family make their own soap, candles, beer, cider, &c. &c. they pay an excise-duty on them; and if they neglect calling in an excise-officer at the time of making these things, they are liable to grievous fines and forfeitures, besides a long train of evils and inconveniencies attending this detestable excise; to enumerate particularly would fill a volume—The excise-officers have power to enter your houses at all times, by night or day, and if you refuse them entrance, they can, under pretence of searching for exciseable goods, that the duty has not been paid on, break open your doors, chests, trunks, desks, boxes, and rummage your houses from bottom to top; nay, they often search the cloaths, petticoats and pockets of ladies or gentlemen, (particularly when they are coming from on board an East-India ship) and if they find any the least article that you cannot prove the duty to be paid on, seize it and carry it away with them; who are the very scurf and refuse of mankind, who value not their oaths, and will break them for a shilling. This is

their true character in England, and I speak from experience, for I have had the opportunity of putting their virtue to the test; and saw two of them break their oath for one guinea, and a third for one shilling's worth of punch. What do you think of a law to let loose such a set of vile officers among you! Do you expect the Congress excise-officers will be any better, if God, in his anger, should think it proper to punish us for our ignorance, and sins of ingratitude to him, after carrying us through the late war, and giving us liberty, and now so tamely to give it up by adopting this aristocratical government?

5.2.3 Representatives and direct taxes shall be apportioned among the several states, which may be included within this union, according to their respective numbers. This seems to imply, that we shall be taxed by the poll again, which is contrary to our bill of rights; but it is possible that the rich men, who are the great landholders, will tax us in this manner, which will exempt them from paying assessments on their great bodies of land in the old and new parts of the United States; many of them having but few taxable by the poll.—Our great Lords and Masters are to lay taxes, raise and support armies, provide a navy, and may appropriate money for two years, call forth the militia to execute their laws, suppress insurrections, and the President is to have the command of the militia.—Now, my countrymen, I would ask you, why are all these things directed and put into their power?—Why; I conceive, they are to keep you in a good humour; and if you should, at any time, think you are imposed upon by Congress and your great Lords and Masters, and refuse or delay to pay your taxes, or do any thing that they shall think proper to order you to do, they can, and I have not a doubt but they will, send the militia of Pennsylvania, Boston, or any other state or place, to cut your throats, ravage and destroy your plantations, drive away your cattle and horses, abuse your wives, kill your infants, and ravish your daughters, and live in free quarters, until you get into a good humour, and pay all that they may think proper to ask of you, and you become good and faithful servants and slaves.*[2]—Such things have been done, and I have no doubt will be done again, if you consent to the adoption of this new federal government. You laboured under many hardships whilst the British tyrannized over you!—you fought, conquered and gained your liberty—then keep it, I pray you, as a precious jewel—trust it not out of your own hands—be assured, if you do, you will never more regain it—the train is laid, the match is on fire, and they only wait for yourselves to put it to the train, to blow up all your liberty and commonwealth governments, and introduce aristocracy and monarchy, and despotism will follow of course, in a few years; for a four-years President will be, in time, a King for life, and after him, his son,

*See the history of the confederate Grecian States—Also the history of England, for the massacre of the people in the valley of Glenco, in the time of William the Third.

or he that has the greatest power among them, will be King also.—View your danger, and find out good men to represent you in convention—men of your own profession and station in life—men who will not adopt this destructive and diabolical form of a federal government:—There are many among you that will not be led by the nose by rich men, and would scorn a bribe.—Rich men can live easy under any government, be it ever so tyrannical—they come in for a great share of the tyranny, because they are the ministers of tyrants, and always engross the places of honour and profit, whilst the greater part of the common people are led by the nose, and played about by these very men, for the destruction of themselves and their class.—Be wise, be virtuous, and catch the precious moment as it passes, to refuse this new-fangled federal government, and extricate yourselves and posterity from tyranny, oppression, aristocratical or monarchical government.

You, who have an opportunity of getting the news-papers, no doubt have 5.2.4
seen the farce and parade at Boston!—they adopted the federal government, and afterwards proposed amendments—let us be wiser—let us not adopt it until it is amended.—I revere the characters of some of the gentlemen that composed the convention at Philadelphia, yet I think they were human, and subject to imposition and error, as well as the rest of mankind.—You lost eight or ten years of your lives and labour by the last war, and were left at last with your debts and incumbrances on you, and numbers of you were soon after the close of it, sued and harrassed for them—your persons have been put into a loathsome prison, and others of you have had your property sold for taxes, and by your rapacious creditors, for one fourth, and sometimes for one tenth of its former and actual value; and you now pay very grievous and heavy taxes, double and treble what you paid before the war; and should you adopt this new government, your taxes will be greatly increased to support them, their officers, servants, and retainers, who will be multiplied upon you to keep you in obedience, and collect their duties, taxes, impositions, and excises. Some of you may say the rich men were virtuous in the last war; yes, my countrymen, they had reason then to be so! our liberty then was in dispute with a mighty and powerful tyrant, and it was for their interest to promote and carry on the opposition, as long as they could stay at home and send the common people into the field to fight their battles—After the war began, they could not with decency recede, for the sword and enemy were at the very entrance of their gates. The case is greatly altered now; *you* conquered the enemy, and the rich men now think to subdue you by their wiles and arts, or make you, or persuade you, to do it yourselves. Their aim, I perceive, is now to destroy that liberty which you set up as a reward for the blood and treasure you expended in the pursuit of and establishment of it. They well know that open force will not succeed at this time, and have chosen a safer method, by offering you a plan of a new Federal Government, contrived with great art, and shaded with obscurity,

and recommended to you to adopt; which if you do, their scheme is compleated, the yoke is fixed on your necks, and you will be undone, perhaps for ever, and your boasted liberty is but a sound. Farewell!—be wise, be watchful, guard yourselves against the dangers that are concealed in this plan of a new Federal Government.

A Farmer and Planter.

March 27, 1788.

1. The Federalist candidates were Charles Carroll, James Carroll, Brice Worthington, and John Hall. The election in Ann Arundel County was won by the Anti-Federalist slate consisting of Jeremiah T. Chase, John Francis Mercer, Benjamin Harrison, and Samuel Chase. See Steiner, *American Historical Review* October 1899, pp. 38, 42. See generally Philip A. Crowl, *Maryland During and After the Revolution* (1943) and his "Anti-Federalism in Maryland 1787–1788," *William and Mary Quarterly* October 1947.

2. Cf. *The Federalist* no. 29, pp. 185–87.

Samuel Chase
Notes of Speeches Delivered to the Maryland Ratifying Convention

April 1788

The notes that follow were taken from the George Bancroft papers at the New York Public Library. They were copied in February 1877, from originals lent to Bancroft by Mrs. C. Chase Oldfield, granddaughter of Samuel Chase, and are thought to be notes of speeches delivered by Chase to the Maryland Convention in April 1788. Chase was an active revolutionary and signer of the Declaration of Independence. He was also a member of the Maryland ruling group and was instrumental in framing the state's high-toned constitution. He has had no full-length biography and remains a paradoxical figure who tended to combine distinguished public service and more or less disreputable behavior. Edward S. Corwin concluded, "His intellectual grasp is fully attested by his judicial opinions; his turbulent disposition appears at every turn in his career."[1] Upon receipt of the Constitution in Maryland, Chase temporized, apparently in recognition of strong Federalist opinion in Baltimore. He favored calling a convention but left his own opinion ambiguous. His only significant written contribution, a piece published in October and appropriately signed "Caution," argues against precipitation but not explicitly against the Constitution.[2]

The notes here are brief and give little indication of how Chase developed his arguments, but they are the only substantial reflection of the views of this important Anti-Federalist leader. In addition, the most interesting portion of the notes is a well developed argument on representation.

The notes are made up of distinct fragments, each of which is left intact here.[3] As there is no way of knowing how Chase used them, the fragments have been arranged here in what seems to be the overall order of the argument. The designations at the head of each fragment have been supplied by the editor.

I. The Constitutional Convention (5.3.1–6)

II. A. The Present Governments of the U.S.: Excellence of State Governments (5.3.7–8)

II. B. The Present Governments of the U.S.: Reform of the Articles of Confederation (5.3.9–15)

III. The tendency of the Constitution to Annihilate State Governments (5.3.16)
IV. A. Objections to the New Government: General (5.3.17)
IV. B. Objections to the New Government: Expense (5.3.18)
IV. C. Objections to the New Government: Liberty of the Press (5.3.19)
V. Representation (5.3.20)

1. "Samuel Chase," *Dictionary of American Biography* IV, 37.
2. *The Maryland Journal and Baltimore Advertiser* 12 October 1787: see reply by A Friend to the Constitution in the same journal, 16 October 1787. The statement of Caution is printed in Ford, *Essays* 325–28; see letter from Daniel Carroll to James Madison, 28 October 1787, *Documentary History of the Constitution* IV, 352.
3. Bracketed material in italics is Bancroft's.

I
The Constitutional Convention

5.3.1 Authority of Delegates to Convention.

Act of appointment.

No authority from legislature to annihilate Confederation and form a Constitution for the United States. Legislature could not grant such power. Deputies acted as mere individuals and not in official or delegated capacity. Express object of delegates to *revise* Confederacy.

5.3.2 Act done—a general or *national* government is formed—the separate sovereignty and independence of each state, and their union by a confederate league is destroyed and they are melted down and consolidated into one *National* Government. In Confederation—*We the States*—in Proposed Constitution—*We the People*—the first is a true *federal government of states* and has no power over the *individual citizens* of any of the states—the latter a national one by express compact of all the people; it establishes a supreme power over the *individuals* of the states.

It annuls the confederacy. See Art. 13.

It swallows up the state governments and state legislatures—it alters our Constitution and annuls our Bill of Rights in many of its most essential parts—How justify this Convention on the principles of Aristides—People no right to interfere, etc.

5.3.3 Aristides p. 9. Amendent in parliamentary language means striking out the *whole*. Convention has only advised—and so might an individual.[1]

Wilson—Convention did not act upon the powers given them by the States but they proceeded upon *original principles*—Independent Gazetteer, 29 Nov.[2]

McKean—State Convention no right to inquire into power of late convention, or to alter or amend their work. Sole question whether to ratify or

reject the whole system.[3] Could convention lessen the *rights* of the people? their right to lessen never surrendered to Convention. People must have a *right* to judge of the Government proposed. No man can controvert the right of proposing amendments. Whether proper and necessary the only question. Aristides 30.[4]

1st. Question. Whether a federal or national government proper for America. S.C. [i.e. Samuel Chase] for the former. Because an extensive country (like United States) on democratical principles only by a Confederation of small republics exercising all the powers of *internal* government, but united by league as to their *external* foreign concerns.—A national or general government however constructed over so extensive a country as America must end in despotism.—If instituted on principles of freedom, not competent to the local wants and concerns of the remote parts of the empire. Montesquieu Vol. I. [Bk. VIII] ch. 16. Brutus No. 1. Cato No. 3.[5] 5.3.4

2nd Question—If *national* whether the one proposed ought to be ratified without any previous amendments. 1. The question is the most important that ever came before an assembly for decision. It involves the happiness or misery of millions yet unborn. The decision requires all the consideration that the utmost exertion of the powers of the mind can bestow. 5.3.5

The present and future generations will bless or execrate us. We [are] at a solemn crisis—and the magnitude of the subject requires that it should be deliberately considered and fully considered with temper and moderation.—[6] 5.3.6

II A
The Present Government of the U.S.: Excellence of State Governments[7]

I am a friend to our present state government because it is wisely calculated to secure all the civil and *religious* rights of the people and fully adequate for *all internal state* purposes, and our *state* Constitution and laws afford security to property and ample protection to the poor from abuse by the officers of our state government and from any oppression of the poor by the rich and powerful. *There is no injury for which our present laws do not provide a remedy*.—There are some few, and not very capital, defects in our form of Government and they may at any time be amended with prudence and sense without any division or commotion—in a word; We might be happy under our present state government, if we knew our own good, and would be contented. I am opposed—averse from the proposed national government, because it *immediately* takes away the power from our *state* legislature to 5.3.7

protect the *personal* liberty of the citizen, and I am convinced in my judgment that it will in a few years entirely absorb and swallow up the state legislature.

5.3.8 Our Bill of Rights which is part of our Constitution provides[8]—

Sect. 2. That the people of this state ought to have the sole and exclusive right of regulating the internal government and police thereof.

Sect. 3. That the inhabitants are entitled to the Trial by Jury according to the course of common law, not only in criminal cases but in all cases between Government and its officers—cause etc.

Sect. 17. Every freeman for any injury to person or property ought to have remedy by the law of the land.

Sect. 18. Trial of facts where they arise is one of the greatest securities of the lives, liberties and estate of the people.

Sect. 23. All warrants without oath to search, etc.

Sect. 13.—Laying taxes by the poll is grievous and oppressive and ought to be abolished.

Sect. 25. Militia proper and natural defence of a free government.

Sect. 26. Standing armies.—27.—28. No soldier to be quartered in any house *in time of peace* without the consent of the owner, and in time of war in such manner only as the legislature shall direct.

Sect. 38. The liberty of the press ought to be inviolably preserved.

Sect. 33. Securing religious rights of conscience.

By our present form of government, the legislature is not supreme but bound by the Constitution.

II B

The Present Government of the U.S.: Reform of the Articles of Confederation

5.3.9 The greatest happiness of a people is to govern themselves. Their greatest misery to be governed by others;—Our *state* government is fully competent to all *internal state purposes*.

For the safety and happiness of the people of this and the other states, *external* objects, or such for which the state governments are not competent are to be provided for.

5.3.10 1. To provide a form to regulate commerce among the states and to preserve peace between the states—resort against domestic enemies, with Indian tribes, and to coin money and to regulate the value thereof, and of foreign coin and to fix the standard of weights and measures—to establish post offices and post roads—may be called a *general internal or continental object*.

2. To preserve all the states from injury or violence from the foreign powers of Europe and to shield them against foreign hostility may be called a *general external or foreign object.*

3. To regulate the trade of the States with foreigners, by Acts of Navigation and by treaties of Commerce with the powers of Europe may be also called a general external or foreign object.

I am for the establishment of power in Congress for all the above or similar purposes. 5.3.11

The 1st—to preserve peace between the states, etc. may be provided for without much difficulty (and about which there never has been nor can be much difference in opinion) by establishing a supreme power to decide all controversies between the states, to coin money, etc., etc. and by a Bill of Rights declaring what the states shall *not* do—as, e.g. not to enter into any treaty, keep troops, coin money, or do any of the above or other acts which the supreme power of all the states are authorized to do.

The 2nd—to preserve all the states etc.—This necessarily includes the power of war;—and the means to carry it on—i.e. to raise money, to maintain troops and to provide a navy.—and it includes the jurisdiction of piracies and felonies on the high seas and of all offences against the law of nations. This also includes the payment of the debt contracted by the United States.

This power is necessary, not immediately pressing—consider the situation of Confederation—but attended with some difficulty. It requires a legislative, an executive and a judicial authority. 5.3.12

Every legislative power should be vested in two, if not three Branches, and they ought to be the *real*, and not the *fictitious* representative of the people. Their numbers ought to be sufficient to know the wants and the wishes of those they represent—too numerous to be corrupted and not so great as to be a mob.

The *Executive* of the States ought to be in a Supreme Magistrate or president—ineligible after a limited time with a Council of short duration and responsible for their advice. 5.3.13

The *Judicial* should be confined to the decision of cases arising on treaties. [*The clause "on treaties" is substituted for—"under the Constitution and laws"—erased*] The great question is in what manner the legislative of the states shall raise taxes on the people of the several states.

I would not give this power only on default of a state to raise its quota as required. If neglected, I would authorise the legislative to lay and collect imposts and duties on tonnage without limitation, provided they be uniform in all the states; also taxes not exceeding limited sums on enumerated Articles of Exports, and stamp and post office duties. If they [be] not sufficient, an excise. Provided they be the same in all the states and that Congress officers be held to account for abuse of authority in the states. And if all [be] not sufficient, a tax on land not exceeding ½ d. per acre. 5.3.14

I would give the above power of taxation without requisition being first made to the states. It is difficult to say what taxes the legislative may lay, but some limitation is necessary.

5.3.15 The Third—to regulate trade—

I am against giving this power—but if it is given let it be to ⅔ of the Senate.

[*Earlier in the original Ms. we find erased—"The 3d—to regulate trade, etc.—This I would agree to"—the sentence being left unfinished.*]

III

The Tendency of the Constitution to Annihilate State Governments

5.3.16 The National Government will in its operation and effects annihilate the State Governments.

1. National Government has unlimited power, legislative, executive and judicial, as to every object to which it extends by the Constitution.

2. The powers of the National legislature extend to every case of the least consequence—it may make laws to affect the lives, liberty and property of every citizen in America, nor can the Constitution of any State prevent the Execution of any power given to the National legislature.

3. The National legislature may impose every species of taxes external and internal (except only on Exports) *excise, land tax,* poll tax, stamps etc. to *any extent,* and may raise and collect them as they please, without any previous requisition to the State legislatures who have nothing to say to the laws for imposing or collecting taxes—

4. The power to impose and collect taxes is the most important of all powers a people can grant—it absorbs all other powers—Maxim—Money finds Men (Troops) and Troops will find money—The power of taxation is the highest object of legislation—it is the necessary means of protection and safety to the people in a *good* government and it ever has been and will be the instrument of oppression and tyranny in a *bad* government.

5. No state can emit paper money—nor without consent of Congress lay any duties on Imports or *Exports* or Tonnage except for executing its inspection laws, and in such cases the net produce is for the use of the United States—Therefore no state can pay its debts—or support its government but only by *direct* taxes on Property—Congress can lay all indirect taxes, and also *direct* taxes when they exercise this power in all its extent. The state legislatures will find it impossible to raise money by *direct* taxes to pay their debts and support their governments—the consequence is certain—without money they will be as Congress is now,—without power, or respect and despised—they will sink to nothing, and be absorbed in the general

government.—The people will not bear the expense of two governments. The state government may come in for some time to carry into execution the National Government—even this may be taken away. Art. 1. Sect. 4. See Aristides 37.[9] Impost 38.[10] Farmer's Letters 9. p. 37.[11] Will impost pay interest of *national foreign and domestic debt* and expenses of new government?

6. The power of the national legislature to raise troops in *peace* (as well as war) without any limitation as to number, or with consent of more than a Majority in Congress [I say not less than 9 of 13 and in same proportion] or a Majority of the state legislatures and to levy money for their support for two years—to control the Militia will also [? *tend*] to swallow up the state governments—

7. The supreme and inferior federal courts will have the same effect by absorbing the state courts—One must be in each state.

8. The power to make laws [*Art. 1. Sect. 8*]—e.g. The state lays a direct tax to pay its debts or to support its government—Congress thinks proper to lay tax on *same property* and as both cannot be paid cannot Congress repeal the State law, or will not their judges declare it void. Will not this conduct deprive the state of all support?

9. [*8 repeated in orig.*] The little power reserved to the states will be an object of jealousy to Congress. The whole Constitution breathes a jealousy of the states—its judges and juries. Truth confirmed by experience of ages that every *individual*, and all bodies of men invested with power, always attempt to increase it, and never part with any of it but by force. It is the very nature of man. The National government will possess this desire and having the means it will in time carry it into execution. I think the people themselves will assent and may be persuaded to call for the abolition of the state governments. It is at this moment the wish of many men in America and some in this state.

IV A

Objections to the New Government: General

I am opposed to the new Government;— 5.3.17

1. Because it gives Congress a power without any limitation to lay any kind of taxes that the invention of Man can suggest—indirect and direct. I particularly object to the power to lay taxes on our lands without any limitation and according to our numbers including 3/5 of our slaves. Also to an Excise and the power to excise officers to enter and search and no remedy by such in state courts—and *Verdict by a Jury;* as under the British government. Clayton's Rep. 44. Woman's shift.[12] Also to a poll tax which Con-

gress is *expressly* authorized—Art. 1. Sect. 9.—to lay on all our whites and 3/5 of our slaves—the most fatal and oppressive of all taxes. N.B. A favorite tax with Congress and R.M. [*i.e. Robt. Morris.*]

2. Because Congress will have a *right* to keep any army in time of peace without number.

3. Because Congress will have a right to quarter soldiers in our *private* houses, not only in time of war, but also in time of *peace*. Bill of Rights 28.

4. Because Congress will have authority over our Militia, and may if they please, march any of them without regard to scruples of conscience against bearing arms, to any part of the United States.

5. Because the inferior federal courts will have the exclusive jurisdiction—Art. 3. Sect. 2 of every controversy between the citizens of the different States—and no trial by Jury. Blackstone 3. c. 33.

6. Because these courts will have the same jurisdiction in controversies between our citizens and subjects of Great Britain or any other foreign state—Tobacco shipped. N.B. An appeal in both cases.

7. Because the Senators or Representatives may be appointed to civil offices under the United States not created or the emoluments increased during the time for which he was elected.

8. Because Congress are to ascertain their own salaries. Art. 1. Sect. 6.

9. Because the Senate are too few in number—only two from each state. 26 at present—a Majority, a Quorum—14—ergo 8 may make a law—liable to corruption—France, Great Britain.

10. Because the Senate are a perpetual body and never die a civil death, although 1/3 is to be chosen every second year—because after first six years there will always be 2/3 of the body in existence—1/3 of which 2/3 will always have served two years and other four years and after first rotation every Senator may serve 6 years.

11. Because 2/3 of the Senate *present* and the president may make treaties of commerce, and the treaties are to be the supreme laws of the land.

12. Because the Representatives are too few in number—1 for 30,000—whites and 3/5 slaves—65 at present—a majority, a quorum 33.—ergo 17 may make a law—liable to corruption.

13. The House of Representatives will not be chosen by the people. Art. 1. Sect. 2.

Maryland is to choose 6 representatives—Every person qualified to elect members to our House of Delegates to be entitled to vote—our legislature is to prescribe the *time*, *place* and *manner* of electing representatives. Art. 1. Sect. 4—Either the people at large of the whole state must choose the six representatives—or the state must be divided into six districts—say 2 on Eastern and 4 on Western shore.

14. Because Congress may alter the *time*, *place* and *manner* of choosing representatives. Art. 1. Sect. 4. proceedings Boston 47–51.[13]

15. Because Congress may alter the time and manner of choosing Senators—the place where is not to be altered.

N.B. Treaties supreme law—Sect. 6.

See Aristides p. 11.[14]

Massachusetts propose to restrict this power to cases expressed.

16. Because the *president* will *not* be chosen by the people *immediately*—that is by electors chosen by the people—as pretended. Art. 2. Sect. 2. The legislature are to direct *who are to be* electors, but the number is fixed to be equal to the whole number of Senators and Representatives—e.g. in this state 8—in all 91. Congress are to determine the *time* of choosing electors and the *day* on which they shall elect the president which shall be the same day in all the states.

The electors are to choose by ballot *two* persons. The person having a *majority* of all the electors to be president and if no person has a majority—which is most improbable, except in first instance then from the *five* highest on the list the House of Representatives to choose the President—each State to have a vote.

17. Because the powers of the President are dangerous. Power of nominating to office. Of pardoning *before* conviction.

18. Because he is eligible for life and he ought to be ineligible after a given number of years.

19. Because the *Judicial* Power extends to controversies between citizens of different states and between citizens of the states and subjects of foreign states and in such cases the trial by Jury is taken away.

20. It is said by the advocates for the new government that we are without a government. Ans. They mean a general or national government—not a state government. The former is wanted to make the *states* do their duty, and pay their Quota to discharge the debt contracted during the war—and to protect the states against the Powers of Europe [*There is a power to decide differences between the States in the Federal Congress*] and to regulate trade—If admitted—yet no necessity much less wisdom to do more than is necessary to answer these objects—powers for these purposes can be given without surrendering up our liberties.

21. The new government will take the burthen from the farmer and planter, and the poor people and place it on trade—because duties on imports and tax on *Excise* will be adopted. Ans. Why cannot state governments do the same?—In truth it is only changing *in part* the mode of taxation—Explain it. *Why poll tax* is not for the benefit of the poor.

22. Regulations of trade and treaties of commerce will bring in money—employ our Merchants—shipbuilders. Ans. if true, give those powers but not those granted.

23. The people can't be worse. Ans. Why are they distressed?—many from their *private debts*—some from taxes—all from the scarcity of money. Will new government pay private debts? Will it lessen taxes? It will make

our Continental debt specie—it is now at 8 for 1. £200,000 would pay the proportion of this state—it was proposed by *an emission*—Consider the Expenses of National government.

24. The government is calculated for a few rich and ambitious men—and speculators in certificates—

25. Merchants are for it. Ans. consider them. Birds of passage.

26. General Washington et al. for it.

27. May amend afterwards. Ans. The amendments proposed prove that these are capital defects. Should amend before adoption—1. because it is easy to grant and very difficult to recall power which from its nature is ever encroaching. 2. No wise people ever gave power over their liberties with a view of getting back the power. 3. It is now in the power of five states to obtain amendments—afterwards there must be nine.—4. a bad government becomes more feared every day by its officers. 5. why not *another convention?* Who is violent for it—Ans. Rich Men and speculators and office hunters.

Call on friends to give reasons for new government.

[*On the margin of this paper the following:*]—why call on people at large? Haste—no delay—Senate for Jany.—

IV B

Objections to the New Government: Expense

5.3.18 Expense of National Government.

Civil List—President—Vice-President—Senators—Representatives—Ambassadors—Judicial Department—Judges, Justices, Chanellor, Clerks, Sheriffs, Excise officers, Naval officers—Locusts—Policy to institute a number of lucrative new offices to increase their influence in the States—Army will provide for many expectants.

IV C

Objections to the New Government: Libery of the Press

Liberty of Conscience—Old Whig No 5-4.[15] Brutus No 2[16]
Bill or Declaration of Rights.
Liberty of Press.

5.3.19 1. The Constitution gives no power to Congress *express* or *implied* to abridge or take away the liberty of the press.

2. Art. 1. Sect. 8. Congress have power to promote Science and it is

impossible to promote Science and at same time destroy the liberty of the press—under this clause may write what they please about Government. There is no Bill or Declaration of Rights to restrain Congress—They will have the power and it remains in their discretion when they will exercise it.

V
Representation

Representation. 5.3.20

1. A fact—the continent will be governed by 65. Six northern states—35-seven southern states—30.

2. I do not object that the states have not an equal representation in the second branch or House of Representatives.

3. I object because the representatives will not be the representatives of the people at large but really of a few rich men in each state.[17] A representative should be the image of those he represents. He should know their sentiments and their wants and desires—he should possess their feelings—he should be governed by their interests with which his own should be inseparably connected. The representatives of so extensive a country—consequently such numbers should be numerous.—A few men cannot possibly represent the *opinions,* wishes, and *interests* of great numbers. It is impossible for a few men to be acquainted with the sentiments and interests of the United States, which contains many different classes or orders of people—Merchants, farmers, planters, mechanics and gentry or wealthy men. To form a proper and true representation each order ought to have an opportunity of choosing from each a person as their representative; this is impossible from the smallness of the number—65. Can six men be found in Maryland who understand the interests of the several orders of men in this state and are acquainted with their situation, wants and would act with a proper sense and zeal to promote their prosperity—If such could be found will they be chosen by the people? No—but few of the Merchants and those only of the opulent and ambitious will stand any chance. The great body of farmers and planters cannot expect any of their order—the station is too elevated for them to aspire to—the distance between the people and their representatives will be so very great that there is no probability of a farmer or planter being chosen.—Mechanics of every branch will be excluded by a general voice from a seat—only the *gentry,* the *rich* and well born will be elected. Wealth creates power—the wealthy always have a number of dependents—they always favor each other—it is their interest to combine and they will consequently always unite their efforts to procure those of their own order or rank to be elected and they will generally suc-

ceed. The station is too high and elevated to be filled but by the *first men* in the state in point of fortune and influence. In fact no order or class of the people will be represented in the House of Representatives—called the Democratic branch—but the rich and wealthy. They will be ignorant of the sentiments of the middling [*and much more of the lower*] class of citizens, strangers to their ability, unacquainted with their wants, difficulties and distress and need of sympathy and fellow feeling.

4. The numbers are too few. It is to consist at first of 65—and cannot exceed 1 for 30,000 inhabitants—whites and 3/5 slaves—a majority, a quorum 33—ergo 17 may make a law—liable to bribery and corruption. G.B. and F. [*i.e. Great Britain and France*] will endeavor to obtain an influence to procure treaties of commerce, and alliances offensive and defensive—they will practice the means—Holland is a proof.

This objection applies to the Senate—at first 26—14 a majority—8 may make a law—liable to same bribery and corruption. Madness to vest 25 men with absolute power—no free people ever reposed power in so small a number. The Executive will corrupt them—they are not excluded from office.

The last House of Commons above 500 members. Number of inhabitants about 8 millions—1 for little above 14,000—The numbers in the Democratic branches in 13 states amount to 2,000. The numbers should be too great to be corrupted and not so great as to be a mob.

[5.] The House of Representatives will *not* be chosen by the people.

Art. 1. Sect. 2.

Maryland is to choose 6 representatives—every person qualified to elect members of our House of Delegates is to be entitled to vote. Our legislature is to prescribe the time, place and manner of electing representatives. Art. 1. Sect. 4. Aristides 9.[18] Either the people at large of the whole state must choose the six representatives, or the state must be divided into six Districts for each to elect one man.—Say 2 on Eastern and 4 on Western shore.

If the whole people choose they will meet in their counties on the same day; this is proposed by some—consider such an election.

If in districts the inconvenience—and the last who vote will elect—and choice like as if all chose. Suppose our delegates chosen in this manner. On the whole I am convinced, 1st That the representation will be merely nominal from the persons and the numbers elected; 2nd That the right of electing is nugatory and cannot be effectually exercised—it is only a *fallacious participation* by the people at large in the national legislature.

6. There is no security even for this nugatory right.

7. I have said the *Senate* are too few in number.

8. The *Senate* are a perpetual *body* and never die a civil death (as in this State) although 1/3 is to be chosen every second year, because after the *first six* years there will always be 2/3 of the body in existence—1/3 of which 2/3 will always have served 2 years; and the other 1/3 will have served 4 years

and after the first rotation every Senator may serve six years.—The body is permanent—will act by system—1/3 at end of every second year may be different men if legislature pleases.

9. In classing, the Senator who pleases will not be put in the class to go out before six years. Vide Boston Debates. 73.[19]

1. Aristides [Alexander Contee Hanson], Remarks on the Proposed Plan of a Federal Government, Ford, *Pamphlets* 224–25.
2. See McMaster and Stone 235.
3. *Independent Gazetteer* 29 November 1787; see McMaster and Stone 232.
4. Ford, *Pamphlets* 245–46.
5. The reference to Montesquieu is to *The Spirit of Laws* VIII, ch. 16, to which both Brutus (I, 2.9.11) and Cato (III, 2.6.13) refer.
6. This portion concludes with the following miscellaneous notes:
   1. People will *not* choose representatives.
   2. Congress to alter place!
   Senate—never heard of the resolve of Senate. Resolves of Senate adopted before those of House of Delegates.
   3rd Wednesday of January—Election
   1st Monday in March—proposed an earlier day of meeting.
7. At the beginning of this section is the following note:
[The following sentence at the head of one of the papers is struck out;—I have long since determined that I would not accept a seat in the Convention unless Gentlemen whose political principles I approved would offer their services to the people]
8. Thorpe, *Federal and State Constitutions* III, 1686–91.
9. Ford, *Pamphlets* 252–53.
10. Ibid. 253–54.
11. See Federal Farmer IX, 2.8.122–24; XVII, 2.8.209.
12. John Clayton, *Reports of and Pleas of Assises at Yorke 1631–1650* (London 1651).
13. *Debates, Resolutions and other Proceedings of the Commonwealth of Massachusetts* (1788) 47–51; Elliot II, 23–27.
14. Ford, *Pamphlets* 227.
15. See Old Whig V, 3.3.26.
16. See Brutus II, 2.9.24.
17. See Federal Farmer II, 2.18.15 n. 11.
18. Ford, *Pamphlets* 225–27.
19. Elliot II, 48.

Address of a Minority of the Maryland Ratifying Convention

(BALTIMORE) MARYLAND GAZETTE
6 May 1788

The following address of a minority of the Maryland Convention contains, in addition to an account of the Maryland ratifying proceedings, two lists of proposed amendments. The first group, agreed to by a committee appointed for the purpose of considering amendments, was aimed at preserving the trial by jury, explicitly giving state courts concurrent jurisdiction and limiting the jurisdiction of federal courts, forbidding the use of general warrants, limiting the power of the federal government over the army and militia, and preserving the liberty of the press. The second group contained more stringent restrictions, for example, on the military and taxing powers of the federal government, and these were rejected by a majority of the committee. An attempt by the minority to get majority support for certain of the rejected amendments in return for a promise to support the Constitution was brushed aside, the majority deciding finally to recommend no amendments to the convention. A reply on behalf of the majority was prepared by Alexander C. Hanson, but it was not published.[1]

1. See Steiner, *American Historical Review* January 1900, p. 207 n.1; the report, enclosed with a letter to Madison, can be found in *Documentary History of the Constitution* IV. 645–64.

To the People of Maryland.

5.4.1 The following facts, disclosing the conduct of the late convention of Maryland, is submitted to the serious consideration of the citizens of the state.[1]

On Monday, the 21st of April, the convention met in Annapolis, and elected the Hon. George Plater, Esq. president. On Tuesday they established rules for the conduct of the business; and on the same day the following question was propounded to the convention:—

"When a motion is made and seconded, the matter of the motion shall

receive a determination by the question, or be postponed by general consent, or the previous question, before any other motion shall be received."

And the following question, viz.

"Every question shall be entered on the journal, and the yeas and nays may be called for by any member on any question, and the name of the member requiring them shall be entered on the journal."

Which two questions the convention determined in the negative.

On Wednesday, the proposed plan of government was read the first time, and thereupon it was resolved, "That this convention will not enter into any resolution upon any *particular part* of the proposed plan of federal government, for the United States, but that the *whole* thereof shall be read through a second time, after which the subject may be fully debated and considered, and then the president shall put the question, That this convention do assent to and ratify the same constitution? On which question the yeas and nays shall be taken." 5.4.2

On Thursday, the members who were opposed to the ratification of the constitution, without such *previous* amendments could be obtained as they thought essentially necessary to secure the liberty and happiness of the people (being confined by the last resolution to consider in one view the whole of the plan of government) stated some of their objections to the constitution.—The convention met in the evening, when Mr. Paca, member from Harford, having just taken his seat, rose and informed the president, that he had great objection to the constitution proposed, in its present form, and meant to propose a variety of amendments, not to prevent, but to accompany, the ratification, but, having just arrived, he was not ready to lay them before the house, and requested indulgence until the morning for that purpose.—The proposal being seconded, and the house asked if they would give the indulgence, it was granted without a division, and they adjourned *for that purpose*.[2]—On Friday, at the meeting of the house, Mr. Paca rose and informed the president, that, in consequence of the permission of the house given him the preceding evening, he had prepared certain amendments, which he would read in his place and then lay on the table, when he was interrupted, and one member from each of the following counties, viz Frederick, Talbot, Charles, Kent, Somerset, Prince-George's, Worcester, Queen-Anne's, Corchester, Calvert and Caroline, and one member from the *city of Annapolis, and one from Baltimore-Town, arose in their places, and declared for themselves and their colleagues, "*that they were elected and* INSTRUCTED *by the people they represented, to ratify the proposed constitution, and that as speedily as possible, and to do no other act; that after the ratification their power ceased, and they did not consider themselves as authorised by their constituents to consider any amendments.*"—After this 5.4.3

*The member from the city of Annapolis, did not give it as his opinion that he was not at liberty to consider amendments, but said he had consulted his colleague, and that his colleague had informed him, the citizens were against amendments.[3]

Mr. Paca was not permitted even to *read* his amendments.—The opponents continued to make their objections to the constitution until Saturday noon. The advocates of the government, although repeatedly called on, and earnestly requested, to answer the objections, if not just, remained inflexibly silent,[4] and called for the question, that "the convention assent to and ratify the proposed plan of federal government for the United States?" Which was carried in the affirmative by 63 to 11.

5.4.4 The vote of ratification having thus passed, Mr. Paca again arose and laid before the convention his propositions for amending the constitution thus adopted; which he had prepared by leave of the house, declaring that he had only given his assent to the government under the firm persuasion, and in full confidence, that such amendments would be peaceably obtained, as to enable the people to live happy under the government;—that the people of the county he represented, and that he himself, would support the government with such amendments, but without them, not a man in the State, and no people, would be more firmly opposed to it than himself and those he represented. Sentiments highly favourable to amendments were expressed, and a general murmur of approbation seemed to arise from all parts of the house, expressive of a desire to consider amendments, either in their characters as members of convention, or in their individual capacities as citizens;[5] and the question was put on the following motion:

"*Resolved*, That a committee be appointed to take into consideration and report to this house on Monday morning next, a draught of such amendments and alterations as may be thought necessary, in the proposed constitution for the United States, if approved of by this convention; and Mr. Paca, Mr. Johnson, Mr. S. Chase, Mr. Potts, Mr. Mercer, Mr. Goldsborough, Mr. J. Tilghman, Mr. Hanson, Mr. J. T. Chase, Mr. Lee, Mr. W. Tilghman, Mr. McHenry and Mr. G. Gale, were appointed a committee for that purpose."

A division was called for on this resolution, when there appeared 66 members for, and not more than 7 against, it.

5.4.5 And then it was resolved, "That the amendments proposed to the constitution by the delegate from Harford-county, should be referred to the above committee."

The committee thus appointed, and the convention adjourned to give them time to prepare their propositions; they proceeded with every appearance of unanimity to execute the trust reposed in them.

5.4.6 The following amendments for the proposed constitution were separately agreed to by the committee, most of them by an *unanimous* vote, and all of them by a *great majority*:[6]

1. That Congress shall exercise no power but what is expressly delegated by this constitution.

By this amendment, the general powers given to Congress, by the first and last paragraphs of the 8th sect. of art. 1, and the second paragraph of the 6th article, would be in a great measure restrained: those dangerous expres-

sions by which the bills of rights and constitutions of the several states may be repealed by the laws of Congress, in some degree moderated, and the exercise of *constructive* powers wholly prevented.

2. That there shall be a trial by jury in all criminal cases, according to the course of proceeding in the state where the offence is committed; and that there be no appeal from matter of fact, or second trial after acquittal; but this provision shall not extend to such cases as may arise in the government of the land or naval forces.

3. That in all actions on debts or contracts, and in all other controversies respecting property, of which the inferior federal courts have jurisdiction, the trial of facts shall be by jury, if required by either party; and that it be expressly declared, that the State courts, in such cases, have a concurrent jurisdiction with the federal courts, with an appeal from either, only as to matter of law, to the supreme federal court, if the matter in dispute be of the value of dollars.

4. That the inferior federal courts shall not have jurisdiction of less than dollars; and there may be an appeal in all cases of revenue, as well to matter of fact as law, and Congress may give the State courts jurisdiction of revenue cases, for such sums, and in such manner, as they may think proper.

5. That in all cases of trespasses done within the body of a county, and within the inferior federal jurisdiction, the party injured shall be entitled to trial by jury in the State where the injury shall be committed; and that it be expressly declared, that the State courts, in such cases, shall have concurrent jurisdiction with the federal courts; and there shall be no appeal from either, except on matter of law; and that no person be exempt from such jurisdiction and trial but ambassadors and ministers privileged by the law of nations.

6. That the federal courts shall not be entitled to jurisdiction by fictions or collusion.

7. That the federal judges do not hold any other office of profit, or receive the profits of any other office under Congress, during the time they hold their commission.

The great objects of these amendments were, 1st. To secure the trial by jury in all cases, the boasted birth-right of Englishmen, and their descendants, and the palladium of civil liberty; and to prevent the *appeal from fact,* which not only destroys that trial in civil cases, but by *construction,* may also exclude it in criminal cases; a mode of proceeding both expensive and burthensome; and also by blending law with fact, will destroy all check on the judiciary authority, render it almost impossible to convict judges of corruption, and may lay the foundation of that gradual and silent attack on individuals, by which the approaches of tyranny become irresistable. 2d. To give a concurrent jurisdiction to the State courts, in order that Congress may not be compelled, as they will be under the present form, to establish inferior federal courts, which if not numerous will be inconvenient, and if

numerous very expensive; the circumstances of the people being unequal to the increased expence of double courts, and double officers; an arrangement that will render the law so complicated and confused, that few men can know how to conduct themselves with safety to their persons or property, the great and only security of freemen. 3dly, To give such jurisdiction to the State courts, that transient foreigners, and persons from other States, committing injuries in this State, may be amenable to the State, whose laws they violate, and whose citizens they injure. 4thly, To prevent an extension of the federal jurisdiction, which may, and in all probability will, swallow up the State jurisdictions, and consequently sap those rules of descent and regulations of personal property, by which men now hold their estates; and lastly, To secure the independence of the federal judges, to whom the happiness of the people of this great continent will be so greatly committed by the extensive powers assigned them.

8. That all warrants without oath, or affirmation of a person conscientiously scrupulous of taking an oath, to search suspected places, or to seize any person or his property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend any person suspected, without naming or describing the place or person in special, are dangerous, and ought not to be granted.

This amendment was considered indispensible by many of the committee, for Congress having the power of laying excises, the horror of a free people, by which our dwelling-houses, those castles considered so sacred by the English law, will be laid open to the insolence and oppression of office, there could be no constitutional check provided, that would prove so effectual a safeguard to our citizens. General warrants too, the great engine by which power may destroy those individuals who resist usurpation, are also hereby forbid to those magistrates who are to administer the general government.

9. That no soldier be enlisted for a longer time than four years except in time of war, and then only during the war.

10. That soldiers be not quartered in time of peace upon *private* houses, without the consent of the owners.

11. That no mutiny bill continue in force longer than two years.

These were the only checks that could be obtained against the unlimited power of raising and regulating standing armies, *the natural enemies to freedom,* and even with these restrictions, the new Congress will not be under such constitutional restraints as the parliament of Great-Britain; restraints which our ancestors have bled to establish, and which have hitherto preserved the liberty of their posterity.

12. That the freedom of the press be inviolably preserved.

In prosecutions in the federal courts for libels, the constitutional preservation of this great and fundamental right, may prove invaluable.

13. That the militia shall not be subject to martial law, except in time of war, invasion or rebellion.

This provision to restrain the powers of Congress over the militia, although by no means so ample as that provided by magna charta, and the other fundamental constitutional laws of Great-Britain, (it being contrary to magna charta to punish a freeman by martial law in time of peace, and murder to execute him,) yet it may prove an inestimable check; for all other provisions in favour of the rights of men, would be vain and nugatory, if the power of subjecting all men able to bear arms to martial law at any moment, should remain vested in Congress.

Thus far the amendments were agreed to.

The following amendments were laid before the committee, and negatived by a majority. 5.4.7

1. That the militia, unless selected by lot, or voluntarily enlisted, shall not be marched beyond the limits of an adjoining State, without the consent of their legislature or executive.

2. That Congress shall have no power to alter or change the time, place or manner, of holding elections for senators or representatives, unless a State shall neglect to make regulations, or to execute its regulations, or shall be prevented by invasion or rebellion; in which cases only Congress may interfere, until the cause be removed.

3. That, in every law of Congress imposing *direct* taxes, the *collection* thereof shall be *suspended* for a reasonable certain time therein limited, and on payment of the sum by any State, by the time appointed, such taxes shall not be collected.

4. That no standing army shall be kept up *in time of peace,* unless with the consent of two thirds of the members present of each branch of Congress.

5. That the president shall not command the army in person, without the consent of Congress.

6. That no treaty shall be effectual to repeal or abrogate the *constitutions* or *bills of rights* of the States, or any part of them.

7. That no regulation of commerce, or navigation act, shall be made, unless with the consent of two thirds of the members of each branch of Congress.

8. That no member of Congress shall be eligible to any office of profit under Congress during the time for which he shall be appointed.

9. That Congress shall have no power to lay a *poll-tax.*

10. That no person, conscientiously scrupulous of bearing arms in any case, shall be compelled *personally* to serve as a soldier.

11. That there be a responsible council to the president.

12. That there be no national religion established by law, but that all persons be equally entitled to protection in their religious liberty.

13. That all imposts and duties laid by Congress shall be placed to the credit of the State in which the same be collected, and shall be deducted out of such State's quota of the common or general expences of government.

14. That every man hath a right to petition the legislature for the redress of grievances in a peaceable and orderly manner.

15. That it be declared, that all persons intrusted with the legislative or executive powers of government are the *trustees and servants* of the public, and as such accountable for their conduct. Wherefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought, to reform the old, or establish a new government; the doctrine of non-resistance against arbitrary power and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.

5.4.8 The committee having proceeded thus far, all the members who voted for the ratification declared, that they would engage themselves under every tie of honour to support the amendments they had agreed to, both in their public and private characters, until they should become a part of the general government; but a great majority of them insisted on this *express* condition, that none of the propositions rejected, or any others, should be laid before the convention for their consideration, except those the committee had so agreed to.[7]

5.4.9 The gentlemen of the minority, who had made the propositions which had been rejected, reduced to the necessity of accommodating their sentiments to the majority, through fear of obtaining no security whatever for the people—notwithstanding they considered *all* the amendments as highly important to the welfare and happiness of the citizens of the States, yet to conciliate, they agreed to confine themselves to the first three of those propositions, and solemnly declared and pledged themselves, that if these were added, and supported by the other gentlemen, they would not only cease to oppose the government, but give all their assistance to carry it into execution so amended. Finally, they only required liberty to take the sense of the convention on the three first propositions, agreeing that they would hold themselves bound by the decision of a majority of that body.

5.4.10 The first of these objections concerning the militia they considered as essential, for to march beyond the limits of a neighbouring State, the general militia, who consist of so many poor people that can illy be spared from their families and domestic concerns, by power of Congress, who could know nothing of their circumstances, without consent of their own legislature or executive, ought to be restrained.

The second objection respecting the power of Congress to alter elections, they thought indispensible. Montesquieu says, that the rights of election should be established unalterably by fundamental laws in a free government.[8]

The third objection concerning previous requisition, they conceived highly important; they thought if money required by *direct* taxation could be paid with certainty and in due time to Congress, that every good consequence would be secured to the union, and the people of the State thereby relieved from the great inconvenience and expence of a double collection

and a double set of tax-gatherers, and they might also get rid of those odious taxes by exise and poll, without injury to the general government.

They were, however, again proposed and rejected.

AFFIRMATIVE, Mr. Paca, Mr. Johnson, Mr. Mercer, Mr. J. T. Chase, Mr. S. Chase.

NEGATIVE, Mr. Lee, Mr. Potts, Mr. Goldsborough, Mr. J. Tilghman, Mr. W. Tilghman, Mr. Hanson, Mr. G. Gale, Mr. McHenry.

Previous to this, a motion was made on Monday the twenty-eighth, in the convention, while the committee were sitting, in the following words, to wit:

"*Resolved*, that this convention will consider of no propositions for amendment of the federal government, except such as shall be submitted to them by the committee of thirteen."

5.4.11 The committee being sent for by the convention, the gentlemen of the majority in committee then determined, that they would make no report of any amendments whatever, not even of those which they had almost unanimously agreed to, and the committee, under these circumstances, attended the house. Mr. Paca, as chairman, stated to the convention what had passed in the committee, read the amendments which had there been agreed to, and assigned the reason why no report had been formally made. A member then rose and proposed a vote of thanks to the president, which had been once read before the attendance of the committee, should have a second reading; and upon the second reading thereof, the previous question was called for by the members, who wished to consider the amendments agreed to by the committee, and such other amendments as might be proposed. The house thereupon divided, and the yeas and nays were called for by the minority, the sense of the convention was taken thereon, and a majority determined that the yeas and nays should not be taken, nor would they permit the vote to be entered on the journal, by which the yeas and nays were prohibited:

To preclude the consideration of any amendments.

A motion was then made "that the convention adjourn without delay," on which the yeas and nays were taken and appeared as follow:

AFFIRMATIVE. The Honorable the President, Messrs. Barnes, Chilton, Sewell, W. Tilghman, Yates, Granger, Chesley, Smith, Brown, Turner, Stone, Goldborough, Stevens, G. Gale, Waggaman, Stewart, J. Gale, Sulivane, Shaw, Gilpin, Hollingsworth, Heron, Evans, O. Sprigg, Hall, Digges, Hanson, J. Tilghman, Hollyday, Hemsley, Morris, Lee, Potts, Faw, J. Richardson, Edmondson, M'Henry, Coulter, T. Sprigg, Stull, Rawlings, Shyrock, Cramphin, Thomas, Deakins, Edwards. 47

NEGATIVE. Messrs. Perkins, J. T. Chase, S. Chase, Mercer, Harrison, Wilkinson, Grahame, Parnham, Ridgely, Cockey, Cromwell, Lloyd, Hammond, Bowie, Carroll, Seney, Chaille, Martin, Done, Johnson, Paca, Love, Pinkney, L. Martin, W. Richardson and Driver. 27

5.4.12 We consider the proposed form of national government as very defective, and that the liberty and happiness of the people will be endangered if the system be not greatly changed and altered. The amendments agreed to by

the committee, and those proposed by the minority, are now laid before you for your consideration, that you may express your sense as to such alterations as you may think proper to be made in the new constitution.

We remain persuaded, that the importance of the alterations proposed, calculated to preserve public liberty, by those checks on power which the experience of ages has rendered venerable, and to promote the happiness of the people by a due attention to their ease and convenience, will justify the steps we have taken to obtain them, to our constituents, and the world.

5.4.13 Having no interest that can distinguish us from the rest of the community, we neither fear censure, nor wish applause. Having thus discharged the duty of citizens and trustees of the public, we shall now submit to the people those precautions and securities which, after mature reflection on this momentous subject, we deem necessary for their safety and happiness.

May that all-wise and omnipotent Being, who made us masters of a fair and fruitful empire, inspire us with wisdom and fortitude to perpetuate to posterity that freedom which we received from our fathers!

William Paca,
Samuel Chase,
John F. Mercer,
Jeremiah T. Chase. } *Members of the committee*

John Love,
Charles Ridgely,
Edward Cockey,
Nathan Cromwell,
Charles Ridgely, of Wm.
Luther Martin,
Benjamin Harrison,
William Pinkney } *Members of convention*

1. On the circumstance of the Maryland ratification, see below, vol. 5, part 1, intro.
2. Hanson denied that, in adjourning, the convention had accepted Paca's proposal. *Documentary History of the Constitution* IV, 652.
3. A correspondent to the Annapolis *Maryland Gazette* 8 May 1788 explained that, on the contrary, the position of the Annapolis member was that the representatives of the city were not authorized to consider amendments, not that the citizens were against any amendments.
4. Hanson explained that the majority had concluded that no good purpose could be served by discussion: there had been abundant opportunity for discussion; each delegate was bound to vote according to the sentiments of his constituents; and ratification should be completed "as speedily as was consistent with decorum." *Documentary History of the Constitution* IV, 650.
5. See ibid. 654–57.
6. According to Hanson, the sentiment in favor of amendments grew out of a spirit of accommodation rather than an opinion that the amendments were necessary to protect the people. Ibid. 655.
7. Cf. ibid. 660.
8. Montesquieu, *The Spirit of Laws* II, ch. 2. See Vox Populi 4.4.3 n.1.

Address by John Francis Mercer

April or May 1788

This address was intended to explain to the New York and the Virginia conventions the reason for the action of the Maryland convention in ratifying the Constitution without proposing amendments.[1] The Address was never printed and may not have been finished or sent. It is printed here from manuscripts, in Mercer's hand, in the Etting Collection of the Historical Society of Pennsylvania.[2] The two portions appear to have been written at different times, and they may have been parts of a larger piece. They were probably written in late April or early May 1788, shortly after the conclusion of the Maryland ratifying convention proceedings.

Mercer argues that the initial enthusiasm for the Constitution made it seem prudent to postpone agitation for amendments to a more favorable season but that the citizens of Maryland now definitely favor amendments. The widespread uncritical acceptance of the Constitution shows how difficult it is to preserve mild and free governments in the face of usurpations by the few. The first portion of the Address concludes with an interesting discussion of representation, which, in so large an area, leads either to the representatives pursuing (or pretending to pursue) the general interest and thus masking their responsibility to their constituents, or pursuing the interests of their districts and thus tending to throw the burdens of government on the minority (5.5.5–6).

The second portion of the Address draws a contrast between the stable mixed government of Britain and its weak imitation in the Constitution. Mercer criticizes the great powers of the proposed general government and the weakness of the states. Nor is it sufficient to reply that the government represents the people. Except when closely checked by the people or by a hereditary nobility, representative government "is really only a scene of perpetual rapine and confusion—and even with the best checks it has failed in all the Governments of Europe, of which it was once the basis, except that of England" (5.5.11). The argument here is similar to that presented by A [Maryland] Farmer (5.1 above), which Mercer probably wrote and with which it should be compared.[3]

1. There is some confusion over the attribution of these pieces to John Francis Mercer. They are filed in the Pennsylvania Historical Society with the papers of John Francis Mercer, and the hand appears to be his. The confusion arises from the subsequent attempt of someone (clearly not the original writer) to identify the writer(s). The first segment carries the endorsement, "James Mercer?" but this half-brother of John Francis Mercer, a Virginia judge, does not appear to have taken part in the ratification controversy. The second segment is endorsed at one place, "John Fenton Mercer" at another, "Mercer, Jo Francis." The former is clearly in error, this half-brother of John Francis Mercer having died in 1756. Both Jackson Turner Main and Morton Borden, who prints the second segment of the address, accept without question John Francis Mercer's authorship. Main, *Antifederalists* 158, 175; Borden, *The Antifederalist Papers* 175–77.

2. Lines and words crossed out by the writer have not been included. An attempt has been made to follow Mercer's punctuation and capitalization, but there is little consistency and the manuscript is often unclear.

3. See 5.1. intro.

To the Members of the Conventions of New York and Virginia—

Gentlemen

5.5.1 The galling Chains of Despotizm under the oppressive weight of which nine tenths of our Fellow Mortals groan—the Tortures which unfeeling Tyranny has invented and fearlessly practized in every Age and every Cline, are melancholy and terrifying proofs of the Incapacity of the *many* to defend those rights, which God and Nature gave them, from the artful and unceasing usurpations of the *Few:*—and they are frightful Lessons to teach us a watchful Jealousy of great and unnecessary Grants of Power and of Changes in a State of Society which we know to be mild and free—Still there are moments of national Languor and Lethargy which the Ambitious [,] ever enterprizing [,] mark with Alacrity and use with Success.—The People long unaccustomed in a good and guarded Government, to bold and selfish Designs in their Rulers, look up with an unsuspicious Confidence, to any alteration, which those entrusted with Power may propose—however unconstitutional the changes, if recommended by Men used to govern them, they seem to come forward under the Sanction of legal authority—if prepared in Secrecy—the public mind taken by surprize, and every Engine previously set in Motion—the unconcerted and unconnected Defence of Individuals is branded with the opprobrious Epithet of *Opposition* and overwhelmed in the directed Tide of popular Clamour—a clamour which a Number of wealthy Men may at all Times command at a small Expence from the most indigent of the Populace.[1]

5.5.2 We forbear to remark on the Manner in which the Constitution proposed for the United States came forward—as the Circumstances are known to you, your own Feelings will render any Observations unnecessary.

The Object of our present Address is to prevent your forming unjust Conclusions from the Adoption of the Constitution in the State of Maryland

by so large a Majority of the Convention and the subsequent dissolution of that Body, without proposing any Amendments.[2]—

Permit us to assure You that the Torrent which burst forth at the Birth of the Constitution had but little Effect on the Minds of many of us—and altho' it might prevent our having that weight with our Countrymen, in the first Paroxisms of Phrenzy which forever accompany great and sudden Revolutions in Government—we were yet determined not to be wanting in our Duty to the Republic, at that Moment when Reason should resume her Empire over the unagitated Minds of our fellow Citizens—from many Circumstances we despaired of this in Maryland untill the adoption of the Constitution—At that Period, when our Efforts could not be subjected to Calumniating Misrepresentation,—we expected that an Appeal to the reflection of our Countrymen, would be listened to with attention and produce those Effects which unanswered and unanswerable Reasons ought to command—All opposition being thus postponed and every necessary Step to inform the minds of our Citizens on one Side neglected—while unremitting Exertions by a Number of wealthy and respectable Characters were continued on the other—it cannot be surprizing that the Elections were generally favorable to the Constitution—In a very few of the Counties did any Candidates propose themselves against it—very few voted and even in those Counties where the Opposition succeeded by such a decided Majority—those Gentlemen's offering was merely accidental. They had refused every Solicitation of the People and had actually determined not to serve in Convention until within 6 Days before the Election— 5.5.3

That the People of the State would have made alterations and amendments a Condition of Adoption, is a Question which from the above Circumstances it is impossible to decide—but that four fifths of the people of Maryland are now in favor of considerable Alterations and Amendments, and will insist on them,—we dont hesitate to declare (as our Opinion) to You and the world.—The difference between amending *before* or *after* adoption (provided it is amended) is certainly not worth a Distinction.— 5.5.4

We are persuaded that the People of so large a Continent, so different in Interests, so distinct in Habits, cannot in all cases legislate in one Body by themselves or their Representatives—By themselves it is obviously impracticable—By their Representatives it will be found on Investigation equally so—for if these representatives are to pursue the general Interest without Constitutional checks and restraints—it must be done by a mutual Sacrifice of the Interests, wishes and prejudices of the parts they represent—and then they cannot be said to represent those Parts, but to misrepresent them.[3]—Besides as their Constituents cannot judge of their Conduct by their own Sense of what is right and proper—and as a representative can always in this view screen his abuse of Trust under the Cloak of Compromize, we do not see what check can remain in the Hands of the Constituents—for they cannot Know how far the Compromise was neces- 5.5.5

sary, and the representative wrong—and to turn out and disgrace a Man when they cannot prove him wrong, and when he will have of Course the voice of the Body he is a Member of in his Favor, would in the Event be found subversive of the Principles of good Government.—

5.5.6 Thus then the pursuit of the general Interest produces an unchecked Misrepresentation—but if Representatives are to pursue the partial Interests of the Districts they represent (which to recommend themselves to their Constituents it is most probable they will do) then the Majority must ruin the Minority, for the Majority will be found interested to throw the Burthens of Government upon that Minority which in these States present a fair Opening by difference of *Cultivation*—*Importation* and *property*—In such extensive Territories governed by one Legislature, the Experience of Mankind tells us that if not by Preference the People will at least be led gradually to confide the legislative Power to the Hands of one Man and his Family—who alone can represent the whole, without partial Interests[—]and this is or leads to unlimited Despotizm—

5.5.7 We have not that permanent and fixed distinction of ranks or orders of Men among us, which unalterably seperating the interests and views, produces that division in pursuits, which is the great security of the mixed Government we seperated from, and which we now seem so anxiously to copy;[4]—[I]f the New Senate of the United States will be really opposite in their pursuits and views from the Representatives, have they not a most dangerous power, of interesting foreign Nations by Treaty to support *their* views?—for instance the relinquishment of the navigation of Missisippi—And yet these Treaties are expressly declared paramount to the Constitutions of the several States and being the *Supreme Law*, must of course control the national legislature, if not supercede the Constitution of the United States itself—[T]he check of the President over a Body, with which he must act in concert, or his influence and power be almost annihilated, can prove no great Constitutional security; And even the Representative body itself—and much more the Senate—are not sufficiently numerous to secure them from corruption—for all Governments tend to corruption, in proportion as power concentrating in the hands of the *few*, renders them objects of corruption to Foreign Nations and among themselves—

5.5.8 For these and many other reasons we are for preserving the Rights of the State Governments, where they must not be necessarily relinquished for the welfare of the Union—and where so relinquished the line should be definitely drawn[.][5] [I]f under the proposed Constitution the States exercise any Power, it would seem to be at the mercy of the General Government—for it is remarkable that the clause securing to them those rights not expressly relinquished in the old Confoederation, is left out in the new Constitution; And we conceive that there is not Power which Congress may *think* necessary to exercise for the *general welfare*, which they may not assume under this Constitution—and this *Constitution* and the Laws made

under it are declared paramount even to the unalienable rights, which have heretofore been assured to the Citizens of these States by their Constitutional compacts.—

Altho' this new Constitution can boast indeed of a Bill of Rights of seven Articles—yet of what nature is that Bill of Rights? to hold out such a security to the rights of property as might lead very wealthy and influential Men and Families into a blind compliance and adoption—whilst the Rights that are essential to the great body of Yeomanry of America are entirely disregarded.— 5.5.9

Moreover those very powers, which are to be expressly vested in the new Congress, are of a nature most liable to abuse—They are those which tempt the avarice and ambition of Men to a violation of the rights of their fellow Citizens, and they will be screend under the sanction of an undefined and unlimited authority—Against the *abuse* and *improper* exercise of these special powers, the People have a right to be secured by a sacred Declaration, defining the rights of the Individual and limiting by them, the extent of the exercise—The People were secured against the abuse of those Powers by fundamental Laws and a Bill of Rights, under the Government of Britain and under their own Constitutions—That Government which permits the abuse of Power, recommends it; and will deservedly experience the tyranny which it authorizes; for the history of Mankind establishes the truth of this political adage—*that in Government what may be done will be done*.[6] 5.5.10

The most blind admirer of this Constitution must in his heart confess that it is as far inferior to the British Constitution, of which it is an imperfect imitation [,] as darkness is to light—In the British Constitution, the rights of Men, the primary objects of the social Compact—are fixed on an immoveable foundation and clearly defined and ascertained by their Magna Charta, their Petition of Rights and Bill of Rights[;] and their Effective administration by ostensible Ministers, secures Responsibility—In this new Constitution—a complicated System sets responsibility at defiance and the Rights of Men, neglected and undefined[,] are left at the mercy of events; We vainly plume ourselves on the safeguard alone of Representation, forgetting that it will be a Representation on principles inconsistent with true and just Representation—that it is but a delusive shadow of Representation proffering in theory what can never be fairly reduced to practice;—And after all Government by Representation (unless confirmed in its views and conduct by the constant inspection, immediate superintendance, and frequent interference and control of the People themselves on one side, or an hereditary nobility on the other, both of which orders have fixed and permanent views) is really only a scene of perpetual rapine and confusion.—and even with the best checks it has failed in all the Governments of Europe, of which it was once the basis, except that of England.[7]— 5.5.11

When We turn our Eyes back to the scenes of blood and desolation which we have waded through to separate from Great Britain—we behold with 5.5.12

manly indignation that our blood and treasure have been wasted to establish a Government in which the Interest of the *few* is preferred to the Rights *of the Many*—When We see a Government so every way inferior to that we were born under, proposed as the reward of our sufferings in an eight years calamitous war—our astonishment is only equalled by our resentment—On the conduct of Virginia and New York, two important States [,] the preservation of Liberty in a great measure depends—the chief security of a Confoederacy of Republics was boldly disregarded and the old Confoederation violated by requiring Nine instead of 13 voices to alter the Constitution.—[B]ut still the resistance of either of these States, in the present temper of America (for the late conduct of the Party here must open the eyes of the People in Massachusetts with respect to the fate of their amendments) will secure all that we mean to contend for—*The natural and unalienable Rights of Men* in a constitutional manner—At the distant appearance of danger to these, We took up arms in the late Revolution—and may we never have cause to look back with regret on that period when connected with the Empire of Great Britain, We were *happy, secure,* and *free*.

1. On the danger from the ever-alert few see references in Federal Farmer IV, 2.8.58 n.44.
2. See below, vol. 5, part 1, intro.
3. See Agrippa VII, 4.6.26; XII, 4.6.58 n. 31. On representation see references in Federal Farmer II, 2.8.15 n. 11.
4. On a balance of orders see Centinel I, 2.7.7 n. 4; on the small republic see Cato III, 2.6.12–20 and n. 8.
5. See references in Plebeian 6.11.15 n. 9; Federal Farmer X, 2.8.132 and n. 84; Brutus VI, 2.9.80 and n. 56.
6. See Symmes 4.5.14 n. 5.
7. Cf. [Maryland] Farmer II, 5.1.22–29.

PART 2

Virginia and the South

Introduction

Following the ratification on 23 May of South Carolina, where the opposition of Anti-Federalists like Rawlins Lowndes, Aedanus Burke, and Thomas Sumpter was easily brushed aside, the debate over the Constitution came to a focus in Virginia. The Federalists still feared concerted Southern action under the leadership of Patrick Henry, and they distrusted Henry's motives and aims. Despite Henry's denials, many Federalists believed that he desired a separate Southern confederacy. "You are better acquainted with Mr. Henry's politics than I can be," Madison wrote to Edmund Randolph in January 1788, "but I have for some time considered him as driving at a Southern Confederacy and not further concurring in the plan of amendments than as he hopes to render it subservient to his real designs."[1] Madison was probably wrong about Henry's real design, and the Federalists unquestionably found a rhetorical advantage in accusing their opponents of wanting to break up the Union;[2] but a separate Southern confederacy was surely considered by the Southern Anti-Federalists as a possible outcome, as well as a bargaining point, and it was objectively a genuine possibility.

Still aristocratic in significant respects, Southern politics tended to be based on established and respected individual leaders, rather than on economic interests or on the political parties developing elsewhere in the country.[3] This was particularly true in Virginia which George Ticknor Curtis aptly described as being "filled with the spirit of republican freedom, although its polity and manners were marked by several aristocratic features."[4] This combination of qualities helped to make the Virginia ratifying convention debates the best and most thorough of all the states. As nowhere else on the continent, the political elite in Virginia was divided. The Virginia Anti-Federalists led by such men as Patrick Henry, George Mason, and Richard Henry Lee were more capable and commanded more respect than any other group of Anti-Federalists in the country. A searching debate in convention lasted more than three weeks; and when the vote was finally taken on 25 June, Virginia ratified the Constitution by a vote of 89 to 79, submitting a list of recommendatory amendments.[5]

1. Madison, *Writings* (ed. Hunt) V, 80–81. Six months later John R. Smith wrote to Madison that "the idea of Virginia standing independent of other States, or forming a partial confederacy or a foreign alliance is more openly avowed by some people in

this quarter, than anywhere else, and I am certain the sentiment originates with the old Governor." *Documentary History of the Constitution* IV, 703. On the question of separate confederacies see above, vol. 1, ch. 4, n. 2.

2. This is of course basic to the rhetorical design of *The Federalist*. See *Observer* 6.4.3.

3. Thus Anti-Federalist Henrico county elected John Marshall, a known Federalist, to represent it in the state ratifying convention. John Marshall, *An Autobiographical Sketch*, ed. John Stokes Adams (Ann Arbor 1937) 7.

4. Curtis, *Constitutional History of the United States* I, 632.

5. In the meantime, however, and unknown to the Virginians, New Hampshire had ratified the Constitution on 21 June by a vote of 57–47; New Hampshire was thus the ninth state to ratify, and Virginia the tenth.

Letter of Richard Henry Lee to Governor Edmund Randolph

16 October 1787

In this letter Lee urges that another convention be held to remedy defects in the Constitution.[1] He is particularly critical of the combination of powers in the Executive and Senate; the absence of any genuine responsibility in the government, either through impeachment or an effective control by constituents; the very broad powers of Congress; the absence of a bill of rights; and the danger to the South of the congressional power to pass commercial laws by a simple majority vote. In a postscript, Lee suggests the amendments he thinks necessary.

The mover of the resolution for independence, Lee was always a strong supporter of Union whose views transcended the localism of some Anti-Federalists.[2] He was a continental man, who thought that the Articles of Confederation, in the adoption and operation of which he had taken an active part, were fundamentally sound if only the states would do their duty under them. He only reluctantly conceded that some modest increases in the powers of Congress might be appropriate.[3] Declining a seat in the Constitutional Convention on grounds of ill health and the alleged impropriety of helping to form a document he would have to pass on as a member of Congress,[4] Lee helped to block Congressional approval of the proposed Constitution. While declining to serve in the Virginia ratifying convention,[5] Lee took an active part in the ratification controversy and was reputed to have assisted Elbridge Gerry in drafting his objections and to have helped other Anti-Federalist writers in Pennsylvania and Delaware.[6] The recipient of much virulent criticism, Lee gave a reasonable and moderate response. Writing to Mason in the spring of 1788 of the kind of example Virginia should set to the yet undecided states, Lee urged a "circumspect and careful" course. "[A]s, on the one hand, every possible exertion of wisdom and firmness should be employed to prevent danger to civil liberty, so, on the other hand, the most watchful precaution should take place to prevent the foes of union, order, and good government, from succeeding so far as to prevent our acceptance of the good part of the plan proposed."[7]

Lee's letter was, according to Washington, "circulated with great industry in manascript, four Weeks before it went to press."[8] It was first published in the *Virginia Gazette,* and seems also to have been published as a pamphlet, though it is not listed in Evans' *Early American Imprints,* and no copy of the pamphlet has been found.[9] The letter was very widely reprinted and discussed. In Virginia it was vehemently attacked by A State Soldier in the *Virginia Independent Chronicle* on 12 March 1788 and was taken up and challenged, point by point, and with a good deal of personal abuse, by Cassius in the same newspaper on 2, 9, and 23 April 1788; Cassius was, in turn, rebutted by Brutus, whose essay is printed below.[10]

1. On the question of Lee's authorship of the important Letters from The Federal Farmer, see 2.8 intro.

2. There is no adequate biography of Lee. See the biography by his grandson, Richard Henry Lee, *Memoirs of the Life of Richard Henry Lee* (Philadelphia 1825), and Oliver Perry Chitwood, *Richard Henry Lee: Statesman of the Revolution* (Morgantown 1967).

3. See Lee, *Letters* II, 419, 424, 427–28, 447.

4. Lee to Edmund Randolph, 26 March 1787, and to John Adams, 5 September 1787, ibid. 415, 434.

5. Lee to General John Lamb, 27 June 1788, ibid. 475.

6. Bancroft, *History of the Formation of the Constitution of the United States of America* II, 230.

7. Lee to George Mason, 7 May 1788, Lee, *Letters* II, 466.

8. Washington to Madison, 7 December 1787; *Documentary History of the Constitution* IV, 395.

9. See Valerius, Virginia *Independent Chronicle* 23 January 1788: ". . . with a peculiar air of importance, you thought the *channel* of a pamphlet was more respectable and better suited to the dignity of your letter, than that of a newspaper." See Crosskey, *Politics and the Constitution* 1300. I have found neither the pamphlet version nor the original newspaper printing, and the reprint here is taken from the *New York Journal* 22 December (5.6.1–3) and 24 December (5.6.4–5) 1787.

10. See Brutus (Virginia) 5.15. See also the criticisms by Aristides, Ford, *Pamphlets* 255.

[22 December 1787]

From the VIRGINIA GAZETTE. *Copy of a Letter from the Hon. Richard Henry Lee, Esq., one of the Delegates from this state in Congress, to his Excellency the Governor.*

New-York, Oct. 16, 1787.

Dear Sir,

5.6.1 I was duly honored with your favor of Sept. 17, from Philadelphia,[1] which should have been acknowledged long before now, if the nature of the business that it related to had not required time.

The establishment of the new plan of government, in its present form, is a question that involves such immense consequences to the present times, and to posterity, that it calls for the deepest attention of the best and wisest friends of their country and of mankind; if it be found good after mature deliberation, adopt it; if wrong, amend it at all events, for to say (as many do) that a bad government must be established for fear of anarchy, is really saying, that we must kill ourselves for fear of dying. Experience and the actual state of things, shew that there is no difficulty in procuring a general convention; the late one being collected without any obstruction. Nor does external war or internal discord prevent the most cool, collected, full, and fair discussion of this all-important subject. If with infinite ease a convention was obtained to prepare a system, why may not another with equal ease be procured to make proper and necessary amendments? Good government is not the work of a short time, or of sudden thought. From Moses to Montesquieu the greatest geniuses have been employed on this difficult subject, and yet experience has shewn capital defects in the system produced for the government of mankind.—But since it is neither prudent or easy to make frequent changes in government, and as bad governments have been generally found the most fixed; so it becomes of the last consequence to frame the first establishment upon ground the most unexceptionable, and such as the best theories with experience justify; not trusting as our new constitution does, and as many approve of doing, to time and future events to correct evils, that both reason and experience in similar cases, point out in the new system. It has hitherto been supposed a fundamental maxim that in governments rightly balanced, the different branches of legislature should be unconnected, and that the legislative and executive powers should be separate: In the new constitution, the president and senate have all the executive and two thirds of the legislative power. In some weighty instances (as making all kinds of treaties which are to be the laws of the land) they have the whole legislative and executive powers. They jointly, appoint all officers civil and military, and they (the senate) try all impeachments either of their own members, or of the officers appointed by themselves.

Is there not a most formidable combination of power thus created in a few, and can the most critic eye, if a candid one, discover responsibility in this potent corps? Or will any sensible man say, that great power without responsibility can be given to rulers with safety to liberty? It is most clear that the parade of impeachment is nothing to them, or any of them; as little restraint is to be found. I presume, from the fear of offending constituents. The president is for four years duration (and Virginia for example) has one vote of thirteen in the choice of him, and this thirteenth vote not of the people, but electors, two removes from the people. The senate is a body of six years duration, and as in choice of president, the largest state has but a thirteenth vote, so is it in the choice of senators.—This latter statement is adduced to shew that responsibility is as little to be apprehended from 5.6.2

amenability to constituents, as from the terror of impeachment. You are therefore, sir, well warranted in saying, either a monarchy, or aristocracy will be generated, perhaps the most grievous system of government may arise.—It cannot be denied with truth that this new constitution is, in its first principles, highly and dangerously oligarchic; and it is a point agreed that a government of the few, is, of all governments, the worst. The only check to be found in favour of the democratic principle in this system is, the house of representatives; which I believe may justly be called a mere shread or rag of representation: It being obvious to the least examination that smallness of number and great comparative disparity of power, renders that house of little effect to promote good, or restrain bad government.[2] But what is the power given to this ill-constructed body? To judge of what may be for the general welfare, and such judgments when made, the acts of congress become supreme laws of the land. This seems a power co-extensive with every possible object of human legislation. Yet there is no restraint in form of a bill of rights, to secure (what doctor Blackstone calls) that residuum of human rights, which is not intended to be given up to society, and which indeed is not necessary to be given for any good social purpose.[3] The rights of conscience, the freedom of the press, and the trial by jury are at mercy. It is there stated that in criminal cases, the trial shall be by jury. But how? In the state. What then becomes of the jury of the vicinage or at least from the county in the first instance, the states being from 50 to 700 miles in extent? This mode of trial even in criminal cases may be greatly impaired, and in civil cases the inference is strong, that it may be altogether omitted as the constitution positively assumes it in criminal, and is silent about it in civil causes. Nay it is more strongly discountenanced in civil cases by giving the supreme court in appeals, jurisdiction both as to law and fact.

5.6.3 Judge Blackstone in his learned commentaries (Art. Jury Trial) says, ["it] is the most transcendant privilege which any subject can enjoy or wish for, that he cannot be affected either in his property, his liberty, his person, but by the unanimous consent of twelve of his neighbours and equals. A constitution, that I may venture to affirm, has under providence, secured the just liberties of this nation for a long succession of ages. The impartial administration of justice, which secures both our persons and our properties, is the great end of civil society. But if that be entirely entrusted to the magistracy, a select body of men, and those generally selected by the prince, or such as enjoy the highest offices of the state, these decisions, in spite of their own natural integrity, will have frequently an involuntary bias towards those of their own rank and dignity. It is not to be expected from human nature, that the few should always be attentive to the good of the many.["] The learned judge further says, that ["]every tribunal selected for the decision of facts is a step towards establishing aristocracy; the most oppressive of all governments.["][4] The answer to these objections is, that the new legislature may provide remedies! but as they may, so they may

not, and if they did, a succeeding assembly may repeal the provisions. The evil is found resting upon constitutional bottom, and the remedy upon the mutable ground of legislation, revocable at any annual meeting. It is the more unfortunate that this great security of human rights, the trial by jury, should be weakened in this system, as power is unnecessarily given in the second section of the third article, to call people from their own country in all cases of controversy about property between citizens of different states and foreigners, with citizens of the United States, to be tried in a distant court where the congress meets. For although inferior congressional courts may for the above parties be instituted in the different states, yet this is a matter altogether in the pleasure of the new legislature, so that if they please not to institute them, or if they do not regulate the right of appeal reasonably, the people will be exposed to endless oppression, and the necessity of submitting in multitudes of cases, to pay unjust demands, rather than follow suitors, through great expence, to far distant tribunals, and to be determined upon there, as it may be, without a jury. In this congressional legislature a bare majority of votes, can enact commercial laws, so that the representatives of the seven northern states, as they will have a majority, can by law create the most oppressive monopoly upon the five southern states, whose circumstances and productions are essentially different from theirs, although not a single man of these voters are the representatives of, or amenable to the people of the southern states. Can such a set of men be, with the least colour of truth, called a representative of those they make laws for? It is supposed that the policy of the northern states, will prevent such abuses.

(*To be Continued.*)

(*Continued from Saturday.*)

But how feeble, sir, is policy when opposed to interest among trading people. And what is the restraint arising from policy? Why, that we may be forced by abuse to become ship builders!—But how long will it be before a people of agriculture can produce ships sufficient to export such bulky commodities as ours and of such extent; and if we had the ships, from whence are the seamen to come? 4000 of whom at lest will be necessary in Virginia. In questions so liable to abuse, why was not the necessary vote put to two thirds of the members of the legislature? With the constitution, came from the convention so many members of that body to congress, and of those too, who were among the most fiery zealots for their system, that the votes of three states being of them, two states divided by them, and many others mixed with them, it is easy to see that Congress could have little opinion upon the subject. Some denied our right to make amendments, whilst others more moderate agreed to the right, but denied the expediency 5.6.4

of amending; but it was plain that a majority was ready to send it on in terms of approbation—my judgment and conscience forbid the last, and therefore I moved the amendments that I have the honor to send you enclosed herewith and demanded the yeas and nays that they might appear on the journal. This seemed to alarm, and to prevent such appearance on the journal, it was agreed to transmit the constitution without a syllable of approbation or disapprobation, so that the term unanimously only applied to the transmission, as you will observe by attending to the terms of the resolve for transmitting. Upon the whole, sir, my opinion is, that as this constitution abounds with useful regulations, at the same time that it is liable to strong and fundamental objections, the plan for us to pursue, will be to propose the necessary amendment, and express our willingness to adopt it with the amendments, and to suggest the calling of a new convention for the purpose of considering them. To this I see no well founded objection, but great safety and much good to be the probable result. I am perfectly satisfied that you make such use of this letter as you shall think to be for the public good; and now, after begging your pardon for so great a trespass on your patience, and representing my best respects to your lady, I will conclude with assuring you, that I am with the sincerest esteem and regard, dear sir, your most affectionate and obedient servant.

Richard Henry Lee.

POSTSCRIPT.

5.6.5 It having been found from universal experience, that the most exprest declarations and reservations are necessary to protect the just rights and liberty of mankind from the silent powerful and ever active conspiracy of those who govern; and it appearing to be the sense of the good people of America, by the various bills or declarations of rights whereon the government of the greater number of states are founded. That such precautions are necessary to restrain and regulate the exercise of the great powers given to rulers. In conformity with these principles, and from respect for the public sentiment on this subject, it is submitted,—That the new constitution proposed for the government of the United States be bottomed upon a declaration or bill of rights, clearly and precisely stating the principles upon which this social compact is founded, to wit: That the rights of conscience in matters of religion ought not to be violated—That the freedom of the press shall be secured—That the trial by jury in criminal and civil cases, and the modes prescribed by the commonlaw for the safety of life in criminal prosecutions shall be held sacred—That standing armies in times of peace are dangerous to liberty, and ought not to be permitted unless assented to by two thirds of the members composing each house of the legislature under the new constitution—That the elections should be free and frequent—That

the right administration of justice should be secured by the independency of the judges—that excessive bail, excessive fines, or cruel and unusual punishments should not be demanded or inflicted—That the right of the people to assemble peaceably for the purpose of petitioning the legislature shall not be prevented—That the citizens shall not be exposed to unreasonable searches, seizure of their persons, houses, papers or property; and it is necessary for the good of society, that the administration of government be conducted with all possible maturity of judgment, for which reason it hath been the practice of civilized nations and so determined by every state in the Union.—That a council of state or privy council should be appointed to advise and assist in the arduous business assigned to the executive power. Therefore let the new constitution be so amended as to admit the appointment of a privy council to consist of eleven members chosen by the president, but responsible for the advice they may give. For which purpose the advice given shall be entered in a council book, and signed by the giver in all affairs of great moment, and that the counsellors act under an oath of office. In order to prevent the dangerous blending of the legislative and executive powers, and to secure responsibility—The privy, and not the senate, shall be joined with the president in the appointment of all officers civil and military under the new constitution—That the constitution be so altered as not to admit the creation of a vice president, when duties as assigned may be discharged by the privy council, except in the instance of proceding [presiding?] in the senate, which may be supplied by a speaker chosen from the body of senators by themselves as usual, that so may be avoided the establishment of a great officer of state, who is sometimes to be joined with the legislature, and sometimes administer the government, rendering responsibility difficult, besides giving unjust and needless pre-eminence to that state from whence this officer may have come.—That such parts of the new constitution be amended as provide imperfectly for the trial of criminals by a jury of the vicinage, and so supply the omission of a jury trial in civil causes or disputes about property between individuals, whereby the common law is directed, and as generally it is secured by the several state constitutions. That such parts of the new constitution be amended as permit the vexatious and oppressive callings of citizens from their own country, and all controversies between citizens of different states and between citizens and foreigners, to be tried in a far distant court, and as it may be without a jury, whereby in a multitude of cases, the circumstances of distance and expence, may compel numbers to submit to the most unjust and ill founded demand. That in order to secure the rights of the people more effectually from violation, the power and respectability of the house of representatives be increased, by increasing the number of delegates to that house where the popular interest must chiefly depend for protection—That the constitution be so amended as to increase the number of votes necessary to determine questions in cases where a bare majority may be seduced by

strong motives of interest to injure and oppress the minority of the community as in commercial regulations, where advantage may be taken of circumstances to ordain rigid and premature laws that will in effect amount to monopolies, to the great impoverishment of those states whose peculiar situation expose them to such injuries.

1. Presumably a letter from Edmund Randolph, written on the day the Constitution was signed, informing Lee of the conclusion of the work of the Philadelphia Convention; this letter does not appear to have survived. Randolph's well-known letter of 10 October explaining his reasons for not signing the proposed Constitution is printed above, 2.5.
2. See Federal Farmer II, 2.8.15 n. 11.
3. *Commentaries* III, 119.
4. *Commentaries* III, 379–80.

Address by Cato Uticensis

VIRGINIA INDEPENDENT CHRONICLE
17 October 1787

This essay, while not deep, is lively and well crafted; it presents a series of moderate, practical objections to the Constitution. Printed first in the *Virginia Independent Chronicle,* the essay was reprinted in Pennsylvania and New York. The author admits that the Articles of Confederation require amendment to give the Congress ample power to regulate commerce and to lay and collect impost duties. He recalls, however, "the well known difficulty of governing large republics with harmony and ease," and suggests that the "blaze of liberty" will be kept alive better "when watched on thirteen altars, than when reunited into one." He emphasizes that in giving the federal government the power of direct taxation, the Constitution opens the prospect of the hated excise, administered by officers from out of state ("Are we not to expect, that New England will now send us revenue officers, instead of onions and apples?"), and backed up by distant federal courts.

To the Freemen of Virginia:

Adventuring, this day, to call your attention to one of the most serious and awful subjects, that ever was agitated by a free people, I must, in the most unfeigned manner, supplicate your kindest indulgence. I must, (it would be presumption to deny it) own that the head which dictates these words, and the hand which guides this pen, trembles at this moment with reverential awe, and, if I mistake not, there are few among thee, whose own feelings will leave any room to doubt it, when you are informed, that I am summing up the courage to question the merits of the *Fœderal Constitution,* proposed to your consideration by the late General Convention. 5.7.1

In the hour of distress, in the moment of confusion and perilous danger, after separately declaring themselves sovereign and independent, the Thirteen States of America associated together in a Fœderal league, for their 5.7.2

common defence, an affair of such magnitude, formed under the influence of such unfavorable circumstances, could not fail of receiving a tinge from them; consequently, when the war, that link, which supplied each defect was over, the yawnings and the chasms of the building began to give evident marks of the hastiness of the workmen: America saw, that without the help of a better cement, the different members were likely to fall asunder, and that, though we may find a lodging in some of the separated pavilions, we must bid adieu to the grandeur and dignity of being inhabitants of a stately palace.

5.7.3 The State of Virginia had the honor of taking the lead in this business, and well aware of its magnitude and import, she delegated some of her choicest sons to it, as did the other States, the result has been anxiously waited for, and in the confidence of its being the offspring of the combined abilities and integrity of America, nobody doubted discovering in it the characteristic features of the parents. The reverence, which every man must feel for them, made me, on examining it, guard against my own opinion with the utmost severity. But, as it is not in the power of man to give up, in any single instance, the dictates of his reason, when he has once been convinced of the propriety of allowing his judgment to be swayed by no other motive, I thought it beneath the dignity of a free agent, with strength of conviction on my mind, to sacrifice it to any authority or predilection whatsoever. To acquire this conviction, 'tis true, I had no small difficulty to bring myself to examine the Fœderal Constitution abstracting from its authors; I hope, nevertheless, that every freeman in Virginia will, in this momentous matter, take the same method, will nobly dare to think for himself, and will not be lulled, perhaps into a fatal stupor, by the whistling of any names whatsoever; this, I am sure, is the wish of the most exalted characters, that formed the Fœderal Convention; and, believe me, when you will not use this priviledge, you are no longer worthy to bear the name of *freemen*. I would wish to find it sunk deep into your recollection, and be early impressed upon the minds of your children, that all the republics, which were, and are not, in the world, owed their loss of liberty and their dissolution, to an overweaning reverence for men and their measures. This consideration is not thrown out to you, with the impious arrogance of insinuating the least doubt of the upright and patriotic views, of the delegates who formed the late General Convention; a vain and presumptuous attempt of that kind would, undoubtedly, have no other effect with you, than that of branding the man, who could be guilty of it, with the most deserved infamy and contempt. The intention of it is, to induce you, as it behoves freemen, to meet the consideration of this matter with minds purged of all kinds of prejudice, and ready to yield to the conviction of your reason.—*Humanum est errare*. The lot of human nature renders it liable to error, and, if we discover it here, it will be a great practical lesson, to humble ourselves before the fountain of ALL WISDOM. Though I have not the fondness to think, that any remarks of mine

shall influence the political conduct of any one, I may, perhaps without incurring the imputation of self-sufficiency, indulge myself with the hopes that they may call forth some abler pens to agitate this matter. It is surely to be wished, that the attention of the citizens of the different States should be fixed, in a cool dispassionate manner, to a subject, which is to have so direct an influence on the future prosperity of them and their posterity.

5.7.4 It has been the language, since the peace, of the most virtuous and discerning men in America, that the powers vested in Congress were inadequate to the procuring of the benefits, that should result from the union: It was found, that our national character was sinking in the opinion of foreign nations, and that the selfish views of some of the States were likely to become the source of dangerous jealousy; the requisitions of Congress were set at naught; the Government, that represented the Union, had not a shilling in its Treasury to enable it to pay off the Fœderal debts, nor had it any method within its power to alter its situation; it could make treaties of commerce, but could not enforce the observance of them, and it was felt, that we were suffering from the restrictions of foreign nations, who seeing the want of energy in our Fœderal Constitution, and the unlikelihood of co-operation in thirteen separate Legislatures, had shackled our commerce, without any dread of recrimination on our part: To obviate these grievances, it was, I believe, the general opinion, that new powers should be vested in Congress, to enable it, in the amplest manner, to regulate the commerce, to lay and collect duties on the imports, of the United States. Delegates were appointed by most of them, for these purposes, to a Convention to be held at Annapolis in the September before last; a few of them met, and without waiting for the others, who were coming on, they dissolved the Convention, after resolving among themselves, that the powers vested in them were not sufficiently extensive, and that they would apply to the Legislatures of the several States, which they represented, to appoint members to another Convention, with powers to new model the Fœderal Constitution. This, indeed, it has now done in the most unequivocal manner, nor has it stopped here, for it has fairly annihilated the Constitution of each individual state. It has proposed to you a high prerogative government, which, like *Aaron's* serpent, it to swallow up the rest: this is what the thinking people in America were apprehensive of; they knew how difficult it is to hit the golden mean, how natural the transition is from one extreme to the other; from anarchy to tyranny; from the inconvenient laxity of thirteen separate Governments to the too sharp and grinding one, before which our sovereignty, as a state, was to vanish.

5.7.5 In *Art* I, Sect. 8. of the proposed Fœderal Constitution, it is said, "Congress shall have power to lay and collect taxes, duties, imposts and excises."—Are you then, Virginians, about to abandon your country to the depredations of exisemen, and the pressure of excise laws? Did it ever enter the mind of any one of you, that you could live to see the day, that any other

government, but the General Assembly of Virginia, should have power of *direct taxation* in this state? How few of you ever expected to see excise laws, them instruments of tyranny, in force in your country? But, who could imagine, that any man but a Virginian, were they found to be necessary, would ever have a voice towards enacting them? That any tribunal, but the Courts of Virginia, would be allowed to take cognizance of disputes between her citizens and their tax gatherers and excise men? And that, if it should ever be found necessary, to curse this land with these hateful excisemen, any one, but a fellow citizen, should be intrusted with that office?

5.7.6 For my part, I cannot discover the necessity there was of allowing Congress to subject us to excise laws, unless, that considering the extensiveness of the single republic into which this Constitution would collect all the others, and the well known difficulty of governing large republics with harmony and ease, it was thought expedient to bit our mouths with massive curbs, to break us, bridled with excise laws, and managed by excisemen, into an uniform, sober pace, and thus, gradually, tame the *troublesome* mettle of the freeman. This necessity could not, surely, arise from the desire of furnishing Congress with a sufficient revenue, to enable it to exercise the prerogatives, which every friend to America would wish to see vested in it; as it would, by unanimous consent, have the management of the impost, it could increase it to any amount, and this would fall sufficiently uniform on every one, according to his ability; or, were this not found sufficient, could not the deficiency be made up by requisitions to the states? Could it not have been made an article of the Fœderal Constitution, that, if any of them refused their quota, Congress may be allowed to make it up by an increase of the impost, on that particular state so refusing. This would, surely, be a sufficient security to Congress, that their requisitions would be punctually complied with.

5.7.7 In any dispute between you and the revenue officers and excisemen of Congress, it is true, that it is provided, the trial shall be, in the first instance, within the state, though before a Foederal tribunal: It is said in *par.* 3. *sect.* 2. *art.* 3. "The trial of all crimes except in cases of impeachments shall be by jury; and such trial shall be held in the state where the crime shall be committed"; but what does this avail, when an appeal will lie against you to the Supreme Foederal Court.—In the paragraph preceeding the one just now quoted, it is said, "In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. *In all the other cases before mentioned,** the Supreme Court shall have *appellate jurisdiction,* both as to law and fact, with such exceptions and under such regulations as the Congress shall make." But, where is this Supreme Court to sit? Will it not be, where Congress shall fix its residence? Thither then you will be carried for

*See the Fœderal Constitution.

trial. Who are to be your jury? Is there any provision made, that you shall have a *Venire* from your county, or even from your state, as they please to call it? No! you are to be tried within the territory of Congress, and Congress itself is to be a party; you are to be deprived of the benefit of a jury from your vicinage, that boast and birthright of a freeman.

5.7.8 Should it not, at least, have been provided, that those revenue officers and excisemen, against whom free governments have, always, justly entertained a jealousy, should be citizens of the state? Was it inadmissible, that, they should be endued with the bowels of fellow citizens? Are we not to expect, that New England will now send us revenue officers, instead of their onions and their apples? When you observe, that the few places, already, under Congress in this state are in the hands of strangers, you will own, that my suspicion is not without some foundation: and if the first cause of it be required, those, who have served in Congress, can tell you, that, the New England Delegates to that Assembly have always stood by each other, and have formed a firm phalanx, which the southern Delegates have not; that, on the contrary, the manœuvres of the former have been commonly engaged, with success, in dividing the latter, against each other. The force of names and of habits is well known, though Scotland and England go now under the general name of Great Britain, the distinction of Scotsman and Englishman still subsists, and, how often has the latter complained, that, that northern hive was continually swarming its hungry instruments of undue prerogative over his country.

5.7.9 The ingenious *Lord Shaftsbury* has said, that a wheel within a wheel was an *absurdity* in politics;[1] but, where was this ever so manifest, as in this Foederal Constitution. The phantom of sovereignty, which is left the state, enables it to legislate in many instances, and lay taxes; to have its tax-gatherers and excisemen too. Unhappy situation where the natural jealousy, and the pride inherent in two separate governments, presiding over the same people, will induce them to vie in the race of taxation to snatch the prize, the spoils of the citizen, that is to glut the vanity of their respective consequence! he, who has meditated on man, and the secret springs, which move him, must expect this. Unhappy situation where two rival excisemen battle at your doors for precedence in seizing these spoils!—In the name of God look well before you leap, consider, that the question is, whether, you would rather be a sovereign or a sharer in sovereignty: whether, as only a few from their abilities and consequence can expect to be delegated, in rotation, to Congress, you are not about to lay the foundation of a dangerous aristocracy. Whether, it is, not more likely that the blaze of LIBERTY will be kept alive among us, when watched on thirteen separate Altars, than when re-united into one, be it ever so refulgent. Consider, whether you are willing to see the state of Virginia dwindle into the insignificance of a town corporate: and as the Mayor Court of aldermen and common-council in this make by-laws for its own government, you are satisfied with a Governor, Senate

and Assembly, which will have the same authority as "the United States shall guarantee to every state in this Union a republican FORM of government." Consider that if you pass the Fœderal Constitution *in toto*, you subject yourselves to see the doors of your houses, them impenetrable castles of freemen, fly open before the magic wand of an exciseman, and, that, if you should resent and punish the insolence of office, the daring brutality of the *publican*, perhaps offered to the wife of thy bosom, you will be dragged for trial before a distant tribunal, and there, perhaps, condemned without enjoying the benefit of a jury from your vicinage, your unalienable birthright as a freeman.

Cato Uticensis.

October 10, 1787.

1. "Sensus Communis, An Essay on the Freedom of Wit and Humor in a Letter to a Friend," in *Characteristics of Men, Manners, Opinion, Times, etc.* I, treatise 2, pt. 3, sec. 3.

A Proposal for Reviving Christian Conviction

VIRGINIA INDEPENDENT CHRONICLE
31 October 1787

This is an essay soliciting support of a plan of certain vestries of the Episcopal Church in Virginia to appoint lay clerks in an effort to revitalize religious conviction. Although unconcerned with the new proposed Constitution, the author argues with particular clarity and coherence the dependence of civil institutions on religious sanction, an important concern of many Anti-Federalists and one that is rejected by James Madison in *The Federalist* no. 10 and elsewhere.[1]

1. See Turner 4.18.2 n. 2.

Mr. Davis,

The following paper was transmitted to me by a friend zealous in the true interests of his country: The matter it contains is, in my opinion, of such importance as to justify my requesting the insertion of it in your very useful as well as Independent Chronicle.

I am, sincerely, yours,
A.B.

The unpromising situation of national affairs has of late, induced many well meaning people to submit to the public their sentiments, however unpolished, respecting the proper means of effecting a reform. Several have, and very justly, pointed out the want of virtue, public and private, as one principal source of our distresses, and have recommended the practice thereof with the most plausible arguments. To such writers the community is certainly much indebted for their well meant endeavours. But alas! the experience of every age evinces that arguments drawn from the native charms of moral rectitude, and its necessary connection with the happiness and welfare of states, are too feeble to ensure the requisite practice of virtue when opposed to the allurements of self-interest and self-gratification. 5.8.1

5.8.2 While mankind consider the obligations to the exercise of virtue as derived from no higher source than the advantages accruing therefrom to society, it is no difficult matter for every individual to satisfy himself, that, provided he can persuade others to the disinterested practice, his dispensing with it in his own case will be a thing of little moment. Hence declamations on the advantages and necessity of public and private virtue fall from the lips of every one, while their lives are stained with the most sordid and selfish practices. Though the different states into which mankind are formed, have, generally speaking, enacted laws to restrain and punish enormities, to countenance virtue and discourage vice; yet the most approved and wisest legislators in all ages, in order to give efficacy to their civil institutions, have found it necessary to call in the aid of religion; and in no form of government whatever has the influence of religious principles been found so requisite as in that of a republic. It requires but a slight degree of observation to be convinced that mankind require the awe of some power to confine them within the line of their duty. The dread of a rapacious tyrant ready to take advantage of the smallest misdemeanor (in order to fill his coffers or gratify a cruel disposition) may preserve quiet and order among the subjects, or rather slaves, of a despotic prince. Even in limited monarchies the security of the sovereign as well as the privileges of the people, depending on a strict attention to the laws, in a great measure, secures their being duly administered. But what is there to correct the injustice and irregularities of the member of a republic, even where the most salutary laws exist, while he can associate numbers in his interest; or supposing the administration of the laws in the hands of such as have a fellow-feeling, or are unwilling to risk their popularity by punctually enforcing them.

5.8.3 Whatever influence speculative vanity may ascribe to the indefinite principle termed honor, or political refinement, to an artful collusion of interests, sound reason as well as experience proves that a due sense of responsibility to the Deity, as the author of those moral laws, an observance of which constitutes the happiness and welfare of societies as well as individuals, is the mean most likely to give a right direction to the conduct of mankind.[1] The man who carries his prospects forward to futurity, and considers himself a candidate for the favor of omnipotence, will be actuated, in the general tenor of his life, by motives that elevate him above the little interests and passions which disturb the peace of society, and will discharge the relative duties of his station, unawed by the fear of man, with a consistence and steadiness correspondent to the principle from which he acts.

5.8.4 It has been the misfortune of our infant legislature that in the multiplicity of business which has come before them, they have not had leisure to attend sufficiently to the importance of religious concerns to the welfare of the state. In consequence of this a cold indifference towards religion has crept upon the minds of the elderly; our illiterate youth have been raised in almost total ignorance thereof; and those of liberal education, forming their opin-

ions of it from the absurd notions and practices of a few ignorant and presumptuous enthusiasts, have contracted a hearty contempt for every thing sacred.

The pernicious effects of this general disregard of religion on the morals and manners of the people, are but too obvious, and point it out as the duty of every wellwisher to his country to contribute his utmost towards a remedy. A deep sense of this has induced the members of some of the vestries of the Episcopal Church to take the matter into serious consideration. Sensible that while such a general indifference prevails, salaries, sufficient to engage pastors of character and abilities, cannot be obtained by voluntary subscription, and desirous to revive among the people a personal concern for religion that may supply the place of a legal establishment, they have resolved to appoint clerks of irreproachable morals, who are to attend only on Sundays, and devoutly to go through the church service. A selection of (instructive?) and practical discourses suited to the [ ] of the audience being made by [ ] one of these immediately after service is to be read by them from the desk. The allowance usually made to clerks being inconsiderable, it is expected little difficulty will be found in raising a sufficiency for the purpose; and it is hoped the habit of regularly attending divine worship will create a desire to have it accompanied with the greatest solemnity, and consequently a willingness to contribute to the support of able ministers. It is apparent however that this plan must fail unless countenanced by people of rank and influence. The limits of your paper will not admit of enumerating the many inducements to this which naturally present themselves. Indeed were the Christian religion considered in its genuine character, as delivered by its Divine Author, not merely as a revelation of certain articles of faith and duty respecting the Deity and a future state; but also as comprehending the most complete system of ethics, calculated to harmonize society by laying a restraint on the passions and regulating the affections of its votaries; few arguments would be requisite to persuade persons of every denomination to give it their countenance, even from motives of policy alone. Parents would find a small advantage in having an opportunity weekly of carrying their children to a place whose sacredness would give, at least a temporary check to that levity of mind, so conspicuous in the rising generation, and where they would receive repeated lessons of integrity, candour, sobriety, and every amiable virtue. The community at large would benefit by the introduction of a body of men qualified to instruct its youth in every useful branch of literature. Those seeds of personal prejudice and dislike which shoot up among mankind, when kept at a distance and estranged from one another, would die away when people came to associate cordially in the exercises of a religion whose spirit breathes nought but universal love and benevolence, and an intercourse of friendly offices, highly conducive to the prosperity of the whole, a love of order and respect to the laws would most probably be the consequence. Those who doubt of

5.8.5

the good effects arising from the operation of religious principles, need only turn their thoughts to the state of Pennsylvania, and contemplate the happy and flourishing condition of that province from its first settlement.

5.8.6 It shall only be added further that it must give every well disposed person pleasure to reflect, that while men of rank and abilities are employed in forming the numerous and complicated wheels of the political machine; the most obscure have it in their power, in this case, to render essential service to their country, by promising that spirit which alone can give the necessary spring and regulations to its different movements.

1. See Turner 4.18.2 n. 2; Federal Republican 3.6.21 n. 19.

Essay by A Georgian

GAZETTE OF THE STATE OF GEORGIA
15 November 1787

Although professing a liking for the plan of the new Constitution, A Georgian criticizes its essential principles. He argues, for example, that the system of requisitions by quotas should be maintained; that voting in the national legislature should be by states; and that the Constitution should provide specifically for the salaries of members of the federal legislature and executive, the size of the civil list, the relief of the President as commander-in-chief when incapacitated, etc. This unknown author covers most of the ground common in Anti-Federalist essays, but his proposals are more than usually concrete and restrictive. His objections are well summarized in the next-to-last paragraph. Of interest are his arguments that the constitution is an apostacy from the free, democratic principles of the Declaration of Independence (5.9.16) and that the Southern interest is inadequately represented and protected (5.9.4). The essay produced a good deal of discussion, pro and con, in the *Gazette*, in which A Georgian took some further brief part but wrote nothing more of substance.

Mr. Printer,

Through the channel of your paper we have lately been favoured with the new Federal Constitution, the plan of which I must confess I like, and it is my heart's wish to see a federal constitution established agreeable to the principles of republican liberty and independence, and on the basis of a democratical government, meaning that of the people, being that very government intended by our glorious Declaration of Independence. 5.9.1

Though this new federal constitution, I believe, was framed and intended for the good of the United States, and, as we are well aware, was assented to by the political saviours of our country, to whom all deference and respect is due, yet the sacredness of these illustrious characters has not been sufficient nor able to prevent several articles from creeping into the said constitution, which, by their different constructions and great latitude given them, an American Sylla or Augustus Octavianus, might one day or other make ser- 5.9.2

viceable to his ambition, interest, and to the utter subversion of our SACRED FREEDOM. And as mankind, upon the whole, is so depraved as, with pleasure, to trample upon the sacred rights and privileges of their fellow creatures, it is certainly one of our greatest cares, both for ourselves and our offspring, to frame such constitutional laws, thereby to prevent such designing tyrants (if ever they be) from grasping at a power, to our destruction, in the said federal constitution, within their reach; as also to guard with the safest care against all encroachments, and to bar them forever from paving the way to what is worse yet, an ARISTOCRATICAL government, whereby about 70 nabobs would lord over three millions of people as slaves; as also to establish power, harmony, equality, and justice, for and among the whole of the United States.

5.9.3 I agree, as it may be said, that the Articles of the Confederation are defective; and, to make it answer effectually the purpose of a federal government, it is to be observed, delegates from all the states, except Rhode Island, were appointed by the legislatures, with this power only, "to meet in Convention, to join in devising and discussing all such ALTERATIONS and farther provisions as may be necessary to render the articles of the confederation adequate to the exigencies of the Union."[1] This was the only power in them vested, and, in conformity to it, had they added to the articles of the confederation a power to Congress, viz. To regulate foreign and internal trade—to lay and collect duties and imposts, uniform throughout the United States—to have the sole legislative power in maritime matters—to have a coercive power to enforce the payment of the quota of each delinquent state—but to leave internal taxation and excise to the management of each individual state, the legislature thereof being certainly best acquainted with that important business [—had they done this, a]ll would have been well, and our federal government as good and fully adequate to its exigencies, as could have been wished. But as this Convention has thought fit to destroy such an useful fabrick, as the articles of the confederation, with the before mentioned amendment and addition, would have been, and, on the ruins of that, raised a new structure, rather favourable to aristocratical and destructive to democratical government[;] and as it seems not to have that equality and justice for its basis, [as] it certainly ought to have, among confederated, free, and independent states, I wish to point out the few articles inconsistent with such a constitution, and also to try the remedies thereof, hoping, by that means, that my fellow citizens will, by a candid second reading of said constitution, agree with me in the impropriety of such articles, and their united wisdom, in a Convention guided by the love of their country, and answering the benefit of the whole, will improve the remedies, and so establish a federal constitution capable of deterring any ambitious men from making an use of it to our destruction; as also to keep alive and in due harmony the confederation among the United Independent States, lately so dearly purchased from the government of Great Britain,

because that meant "TO BIND US IN ALL CASES WHATSOEVER."[2] But now to the point itself:

Article I, section 2. This section mentions that, within three years after the first meeting of the Congress of the United States, an enumeration shall take place, the number of representatives not to exceed one member for every 30,000. This article I believe to be inadmissible: 1st, it affording too small a representation (supposing 48 at the highest calculation) and especially in the southern states; their climate, soil, and produce, to a large extent back, not being capable of that population as in the northern states. Would it not therefore be better to increase the number of representatives, say one member for every 20,000 for the states north of Virginia, and one for every 15,000 south of the said state, itself included? Or, 2dly, divide the states into districts, which shall choose the representatives, by which every part of a state will have an equal chance, without being liable to parties or factions? Should it be said it will increase the expence, it will be money well laid out, and the more so if we retain the paying them out of our own hands; and, supposing the voting in the house of representatives was continued as heretofore by states, would it not be more equal still? At any rate I would strenuously recommend to vote by states, and not individually, as it will be accommodating the idea of equality, which should ever be observed in a republican form of government. Or, 3dly, if it was in proportion to the quotas of the states, as rated in taxation, then the number of members would increase with the proportion of tax, and at that rate there would always be an equality in the quota of tax as well as representation; for what chance of equality, according to the constitution in question, can a state have that has only one or two votes, when others have eight or ten, (for it is evident that each representative, as well as senator, is meant to have a vote, as it mentions no other mode but in choosing the president) and as it is generally allowed that the United States are divided into two natural divisions, the northern as far as Virginia, the latter included forms the southern? This produces a wide difference in climate, soil, customs, manner of living, and the produce of the land; as well as trade, also in population, to which it is well observed the latter is not so favourable as the former, and never can nor will be, nature itself being the great obstacle. And when taxation is in agitation, as also many other points, it must produce difference in sentiments, and, in such a dispute; how is it likely to be decided, according to the mode of voting, the number of members north of Virginia the first three years is 42, and the southern, Virginia included, 23; and, when the enumeration takes place, the odds is somewhat more, say 32 north, and 16 south? Is human nature above self interest? if the northern states do not burthen the southern in taxation, it would appear then really that they are more disinterested men than we know of. 5.9.4

Out of these observations I shall leave my fellow citizens to join in an amendment necessary in this section.

5.9.5 Art. I, sect. 4. What advantage can accrue to Congress to have the power to order where, or in what part of the state, the senators or representatives, agreeable to this and the second section, are to be chosen in each state? And, for fear they should convene the state of Georgia at Bourbon or Shoulderbone, I would advise that the words, *"but the Congress may at any time by law make or alter such regulations, except as to the place of choosing senators," be erased.*

5.9.6 Art. I, sect. 6. What advantage can it be to Congress to have the power to pay themselves? and yet it may be very detrimental to the states. May they not do as the members of a certain state assembly did, spend most of the money raised by the taxes in paying themselves? And why is their salary not fixed? for who can say how the senators or representatives may incline to live? perhaps much better than we can afford to pay. Also, is it meant by this section that a member, either of the senate or representatives, is not to account for his acts to his constituents? If so, this is contrary to the idea entertained by freemen who delegate their power for a limited time. That the representative should be called on by his constituents to answer and give his reasons for his measures is one of the firmest barriers to liberty. Therefore I would propose this section to read thus:

"Art. I, sect. 6. The senators and representatives shall receive a compensation for their services, not exceeding five dollars per day, during their attendance and going to and coming from Congress, to be paid out of the treasury of their respective states. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest, during their attendance at the sessions of their respective houses, and in going to and returning from the same. And for any speech or debate in either house they shall not be questionable in any other place, except when they shall be called upon for that purpose by their constituents."

5.9.7 Art. I, sect. 8. The words TAXES and EXCISES are inadmissible, and I would recommend them to be expunged; for, by this section, as it stands, there is no limited taxation, and no check. Should not rather the civil list, and other arrangements suitable for a peace establishment, together with debts and interests due, have been made out, and laid before the house? Let this sum then be the tax in times of peace, assess each state with its quota, call it in by a certain day, and, if not paid, let Congress by all means have the necessary compulsory powers. And in case an unlimited taxation in actual war is to be given, let it cease positively immediately on the return of peace. Remember the civil list of England was, not many years ago, but a few hundreds of pounds, and now it is far above a million, and yet there in times of peace, nay even in war, the sums and the uses must be ascertained before it is granted by parliament. Upon the whole, it can never be allowed that we can suffer ourselves to be individually taxed by Congress, they being unacquainted with our private circumstances; but our own legislature is the only body politick to whose management it can be trusted.

That part of the 8th section respecting *tribunals* is utterly inadmissible; its extent being not known and without bounds, and threatening to annihilate all state jurisdictions, it ought therefore to be entirely expunged.

Also that part respecting *the army* I would recommend to read thus: "To raise and support armies only in times of war, invasion, insurrection, or rebellion; and no appropriation of money to be for a longer term than one year to that use. No standing armies to be kept on foot during times of peace within the United States, except what may be necessary to garrison frontier posts."

Further, that part of said 8th section respecting *territorial legislation* for the district where Congress resides, confine it only to five miles square; a larger extent might be made a nursery out of which legions may be dragged to subject us to unlimited slavery, like antient Rome.

Art. I, sect. 9. That part of this section respecting our *home trade* should have this addition, in order to prevent smuggling and a contraband trade, "but they shall be obliged to produce sealed customhouse certificates from the ports they last cleared or sailed from." 5.9.8

That part of the same section respecting *the Writs of Habeas Corpus,* let it, by your leave, read thus: "The privilege of the Writ of Habeas Corpus shall remain, without any exceptions whatever, inviolate forever."

Art. 2, sect. 1. Would it not be necessary to say, "that the president shall hold his office during the term of four years out of eight?" *Query,* What number of men choose a president for the important and almost unlimited trust in the United States? There are no more than 93 for the first three years, and Georgia's quota is five; and, after three years, the number of electors will be but 76, for, I say again, 30,000 people are not so easily acquired; then the right of Georgia lies in three only for so great a trust. If a majority of 558 members have as yet been bought into the court interest in Great Britain, *Query,* How many offices, and how much money, will it take to buy the majority of 76 members, if ambitious men should attempt to set about it? and who can set bounds to the depravity of human nature, if not restrained by wholesome constitutional laws? Therefore let us guard against such an accident by having more electors. 5.9.9

Query, Would it not be necessary to fix the day unalterably forever for choosing of electors, and for them to give their votes for a president?

Also, Would it not be well done to fix the president's salary at once, by saying he shall have 4000 dollars per annum?

Art. 2, sect. 2. If the president should at any time be incompetent for military command in war, etc. (for he cannot be prevented from taking the chief command when it is his right) and should choose to take the command notwithstanding, what ill consequences may not result? for we know there are many wise and good men, and very fit for civil rulers, but are quite unfit for the command of armies and navies. Would it not be better said, "That the president, with the advice of both Houses of Congress, shall be com- 5.9.10

mander in chief, etc. etc. etc." By this clause, ought we not to look into the troubles in Holland, and see how the Stadtholder (laying aside his hereditary claims) behaved, contrary to the positive orders of the States General, his masters, during our late glorious revolution? and has he not accumulated powers destructive to their commonwealth, and which are now the sole cause of their present troubles? and should we not avoid the like by making the president ineligible to the office as many years as you allow him to hold it? and that he only be commander in chief, and nominate and appoint all officers, civil and military, by and with the advice of the senate, etc. only? Therefore I would advise the clause, *"But the Congress may by law vest the appointment of such inferior officers as they think proper in the president alone,"* etc. be struck out.

5.9.11 Art. 2, sect. 3. It will certainly be no harm, but of infinite benefit, if all continental commissions have the clause, "By and with the advice of the senate of the United States." This will prevent the officers from looking up to the president alone as their master and benefactor. This is another observation which has come to us from Holland, where several great officers refused to serve the state of Holland against the Stadtholder, saying expressly they had their commission only from him, and considered themselves under his command, and no other.

5.9.12 And now we come to the point which at once teems with numberless enormous innovations, by introducing strange and new courts, of almost any denomination, into any of the states, whereby our own courts will soon be annihilated, and abolishing the only pledge of liberty, the trial by jury, to tyrants only formidable, in all civil cases, countenancing the greatest injustice to be lawfully, nay constitutionally, committed by the rich against their brave fellow citizens, whose only misfortune is, to be, perhaps, not so rich as they, by dragging their lawsuits of any denomination, and of any sum, however small, if they choose, before the GRAND TRIBUNAL OF APPEAL, to which the poor will be unable to follow, with their evidences and witnesses, and on account of the great expences. Therefore, fellow citizens, pray restrain this encroachment, so destructive to the inestimable rights the more numerous part of middle circumstanced citizens now enjoy. With horror beware of the precipice before you; and, if you will, please join me in amending the third article in the federal constitution thus:

5.9.13 "Art. 3, sect. 1. The judicial power of the United States shall be vested in one supreme court only, which shall be resident wheresoever Congress resides, the judges and officers whereof shall hold their offices, by and with the advice of both Houses of Congress, during good behaviour, and shall at stated times receive for their services a compensation, which shall not be diminished nor increased during their continuance in office. The expences attending a suit in this supreme court shall not exceed 60 dollars."

5.9.14 "Art. 3, sect. 2. The judicial power of this supreme court shall extend to all cases in law and equity arising under this constitution, the laws of the

United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other publick ministers, and consuls; to all cases of admiralty and maritime jurisdiction, and respecting foreign trade; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of the same state claiming land under grants of different states, and foreign states, foreign citizens, or subjects."

"In all cases affecting ambassadors, other publick ministers, or consuls, and where the United States shall be a party, and between two or more states, the supreme court shall have original jurisdiction; but, in all the other before enumerated cases, it shall have appellate jurisdiction only, as well of law as fact."

"The trial of all civil and criminal causes, except in cases of impeachment, (as provided for in article I, section 3) shall be by jury, drawn by lot out of a box from among the freeholders of that state where Congress shall reside, and within five miles thereof; and, when a crime against the United States has been committed within no state, the Supreme Court of Congress shall have the trial of the same where Congress then resides."

"The state's attorney in each and every state shall prosecute all criminals who have committed crimes against the United States. Such trial shall be held where the crime has been committed, by such state court as has jurisdiction of the vicinity."

Art. 4, sect. 5. At the conclusion of the fourth article, add, "The freedom of the press, and trial by jury, shall be held sacred and inviolate throughout the United States forever." 5.9.15

Thus, fellow citizens, have I pointed out what I thought necessary to be amended in our federal constitution. I beg you to call to mind our glorious declaration of independence, read it, and compare it with the federal constitution; what a degree of apostacy will you not then discover: Therefore, guard against all encroachments upon your liberties so dearly purchased with the costly expence of blood and treasure. Show that you have yet that noble spirit, and provide remedies against the numberless evils of an unlimitted taxation,—against the fatal effects of a standing army in times of peace,—against an unfair and too small representation. Let your suffrages at elections never be suffered to be regulated by laws at pleasure, but let it be stated and fixed. Let the trial by jury in civil and criminal causes, and the liberty of the press, be forever sacred and inviolable. Let Congress, for God's sake, not have that power of jurisdiction sought after to our destruction, but confine them to a territory of five miles only, and to only one supreme court, and allow them none extraordinary. Neither appeals in cases between citizens, whereby the rich may fly from justice, and the poor unable to follow them. And, at this rate, I am confident you will establish a government which will be lasting, and a blessing to ourselves and generations hereafter. 5.9.16

Having now discharged my duty, which as a citizen I owe to God, to my country, and myself, I leave you to judge for yourselves, and I hope you will act as becoming freemen and the guardians for your offspring.

A Georgian

1. The language is a somewhat abbreviated version of the Georgia ordinance of 10 February 1787 appointing delegates to the constitutional convention, which was patterned on the original Virginia resolution of 16 October 1786. The delegates were charged, however, to make revisions to render the "Federal Constitution" (not, as A Georgian has it, "the articles of confederation") adequate to the exigencies of the Union. See Farrand III, 576–77; cf. 559–60.
2. This is of course the language of the Declaratory Act of 1766.

Essays by Cato

STATE GAZETTE OF SOUTH CAROLINA
November–December 1787

A rather unusual Anti-Federalist, Cato (unrelated to the well-known New York Cato, 2.6) views the Constitution with pleasure and regards it as well calculated "to direct the movements of our rising empire" (5.10.2). He approves its subordination of the states to the general government and its protections against the mutability of laws and the excesses of parties and factions. He urges the country to "shake off our libertinism, and wish only to be free so far, as well regulated laws will permit and defend" (5.10.2). Cato's criticism of the Constitution concerns the proposed presidency, where he makes a substantial argument in favor of frequent rotation. The presidency will be, in fact, a royal office. Examining the examples of republican Rome and Cromwellian England, Cato argues specifically that the president should serve for four years and be ineligible for a second term. America is not so poor in qualified men as to need to rely on one or a few to fill this office. Indeed, the presidency should be accessible to the numerous citizens of ability and integrity. Such a rotation would moreover avoid the tumult that inevitably arises when a long-term executive finally ends his career.

The first essay appeared on 26 November 1787. It was answered by Maecenas in the same journal on 6 December, with a rebuttal by Cato on 10 December in which he shows rather convincingly that his main argument has been missed by his opponent's shafts.

I
26 November 1787

. . . in discrimen extremum venimus; nihil est jam ante nos reficiamus, aut ubi lapsi resistamus[1] . . .

Countrymen and Fellow-Citizens,

With you have I shared the dangers of a civil war, where humanity on the 5.10.1

side of our invaders was disregarded, and the heart grew callous to the ties of nature. With you have I seen the enemy repelled from our lands, and where oppression formerly waved her iron wand; now does liberty expand her wings in peace. But is your happiness complete for having conquered an[2] enemy, and delivered yourselves from the oppressions of a tyrant? Liberty in all climes is pleasing, and not easily gained: but more hard to be defended, and rendered serviceable to us. Rouse then yourselves to act towards the noble end, of carrying into execution what has been so happily conceived; fix on a sure basis, the constitution of America, and give to your posterity a vigorous and well digested government. Then shall you live in history revered by nations, and blessed by those, who participate the good effects of your counsels. For as the day on which we attain the knowledge of virtue is no less pleasing than when we put her precepts in execution: so those who preserve our liberties and laws, are no less regarded, than those who prepared them for us.

5.10.2 A constitution is at length framed by the federal convention, by men whose names alone give us the ideas of wisdom and integrity. By this constitution if it be approved, is America to be guided, and her sons protected. By it will she either flourish in commerce, or sink in bankruptcy. Be respected by foreign powers, or despised by them. At this momentuous crisis when so much is at stake, surely does it become every one, to act towards the general good; but more especially those whose abilities are great, and whose time is unappropriated. 'Till now have I been waiting for others to step forth, comment upon the resolves of the convention, and explain our situation and dependencies. For every subject the greater the lights be in which it may be viewed, the better will it be elucidated. Hence the reason, why I take upon me to touch upon political principles. With pleasure do I view the plan of government offered by the federal convention; as teeming with many blessings; and as being the only one calculated to direct the movements of our rising empire. But let us not be hurried away so much with transport, as to be blind to what our interests commands us to perceive. Let us not approve of laws until we have well considered them, nor ratify hastily what we may never undo! How long have we rioting in liberty cultivated the ideas that each state should be a sovereign power, and that its laws should not be controuled? How long have we seen a succeeding law abrogating a former one, as the prevalence of party, or the gust of passion influenced our assemblies? How long I say have we seen treaties unattended to, recommendations from congress unavailing, and their laws contracted by the operations of the state legislatures? And after these sad events shall we still foster the wild ideas of liberty, which teach us to give up as little as possible of our power, to influence the spring of our confederated government? No: with a generous effort let us shake off our libertinism, and wish only to be free so far, as well regulated laws will permit and defend. Inconsistent is it to have one sovereignty within an other, or that more

power should be vested in a part, than is consistent with the union and welfare of the whole. Hence the excellence of our new plan of government shews itself, as taking away the ensigns of royalty from every state, and leaving them only powers which are useful and beneficial.[3] But even in this way of thinking let us not be too generous, for by giving to others too much, we shall make them haughty and overbearing. With a jealous eye are we to observe the proposed president in the resolves of the convention; as one who will be possessed of power, royalty, and interest. The name of king, to be sure he will not have; but many of his qualities will be inherent in him. As commander of the army and navy of the United States, we see him invested with great power. Power which in the hands of a good man will be respected, but in those of a bad one will be feared.—During the recess of the senate he is allowed to fill up all vacancies, by granting commissions. This is what if perverted may be attended with serious consequences. And in particular cases he is allowed to adjourn both houses to an indefinite time.[4] After this, is it to be doubted, whether he shall be eligible when his term of four years shall be expired? Reason and experience forbid it, then let your determinations be fixed accordingly. It may be objected by some, that the resolves of the federal convention, do not say that he may be eligible again. But do they say that he shall never enjoy the office but once? This is not mentioned: he *may* enjoy it for his life, he *may* transmit it to his children—when I take a view of past transactions, and adapt them to our present times, my mind informs me that the present crisis demands our most serious consideration. When I consider what is now agitated in Europe, I am to believe that my fears are not badly founded. Thrice happy people if your government be regulated by reason and experience, by rectitude and patriotism! If no ambition be admitted into your councils, but a laudable emulation acting towards the general good—Then shall we see each day productive of some good, and each year strengthen the sinews of the commonwealth. Then shall we see America rise triumphant, and shine with unborrowed splendour—When Rome was so governed, when merit was the guide to offices, and a jealous patriotism reigned throughout each breast; then conscious of her own importance, she was happy; and respected around, she was proclaimed the mistress of the world. We see at that time, no offices of importance (except the dictatorship) were made; but what were restricted in time. The consulship and the tribuneship, those bulwarks of Roman liberty, and springs of Roman actions were confined in duration: and the highest Roman office (the consulship) which was amenable to the laws, was allowed to be possessed only for one year. That jealousy which we should have, and which then the Romans had, would not suffer them to put it in a man's power to be dishonest; would not lull them so much, as to permit their country to be ruined. For many reasons they would only have consuls, from year to year. Should they continue them longer, they feared that their interest and power encreasing with their duration of office, would

in the end be subversive of their own liberty. On the other hand, should, they be eligible only for a small time; they imagined the consuls could not have leisure to act against their country: but their desires would be to excell each other, and thereby act for the general good. And as long as Rome was governed by Consuls, so long did she continue to rise in power and reputation. So long did dictators who were even superior to the laws, not forfeit the trust reposed in them. For they were actuated by honor, and restricted by shame. But as soon as a decree of the Senate suffered a Dictator to be perpetual, we see a Caesar arise; enslave his country, and trample upon those whose credulity he had imposed upon. Suffer me now to return to our present situation; suffer yourselves to think unprejudiced of the matter before you. And surely you will conclude that the office of President should not continue longer than four years—but then shall he not be eligible again? By no means—It has been urged already, and it may be so again; that if he be re-eligible, it will be an incitement to good behaviour.[5] Futile is that reasoning which tends to advance that only one, or a few, are fit for the office. America indeed would be poor, if for every year in a century, she had not a different citizen deserving of the presidentship. Should he be eligible for life, or during good behaviour; what room is there left for men equal to him in abilities or integrity, to hope they may arrive at that office? And certainly in a republic, there should be a free access to every high station. It is a right each individual has to exact, because he supports and defends the constitution by which he is governed. Ungenerous is it in that mind which wishes to grasp every honor, impolitic in those who wish to confine them to a few. If a President by the constitution which we are about to make, should be re-eligible; does not the rashness of the design, strike every thinking observer? He may be a good man, and may extend his country's glory: but an end must be put to his career, and if nothing else can, death certainly will. Then if he should not have fixed his power in his family, as I have said may happen: yet a new election which must follow, would probably cause great convulsions; because great interest would be made to attain to an office, which might be enjoyed for life—If we but turn our eyes to the government of Poland, we will see that the openings given for commotions after the demise of her King, are great, and much to be feared. We will see that whole kingdom, then divided into parties; which are equally impelled by interested motives, and wandering from the line of rectitude and patriotism. We will then see, her blood and strength exhausted: not in the prosecution of her own interests, but in basely forwarding the views of surrounding powers. If we turn them from thence to the United Provinces, we will *now* see them involved in tumult and confusion: we will *now* see sad effects arising from the cause, of continuing an high officer in his power. We will see him striving to encroach upon the people his constituents, and them endeavouring to bind him faster than he now is—If the President shall hold his office for four years only, and never again: then shall we see each man obey his

proper calling, and every thing be placid and serene. He who is chosen will be happy, because he is not envied; and they who have chosen will be also content, because they may arrive to the same station. We shall then see a laudable emulation, predominant among us; and every new Presidentship swell the annals of our country's fame—But that we may view in a proper light some powers of the President, let us revert to the 3d section, of the 2d article, in the proposed constitution. There we will find his unlimited power in adjourning both houses when they disagree "to such time as he shall think proper." A power which when misused will be productive of the most fatal consequences. And to believe that the case of disagreement may not happen, that the members of either house may not be influenced; is to leave ourselves open to a slight contingency. Is to imagine that mankind are not the same at present, as they were eighteen hundred years ago; or that greater patriotism is vested in Americans, then in any other race of men—After Cromwell had in a great measure broken the springs of British government, was not the adjournment of Parliament, *sine die*, the stroke by which he effectually trampled upon the liberties of Great-Britain? And shall we, when our President is to be possessed of this power by law, add still to his authority, by permitting him to be *long* in office? I trust my friends, that this will not be the case. I trust that the fear of our own misery, the hope of our own exaltation, and the experience which we have gained from the calamities of others, will so influence our councils, and determine our opinions; as that the reason of what has been advanced, will be evident and alluring—Then shall we see our President, enter upon his office with satisfaction. And as the rising sun adds joy to the creation, so shall his commencement extend the rays of happiness upon all men: and his career be not only productive of honor to himself, but serve that empire for whose welfare he was exalted.

Cato.

II

10 December 1787

Having already made some observations upon the resolves of the Federal Convention, I hoped to have rested in tranquility. The truths which I spread forth to the general view lately, were self-evident; and do not call upon me now to defend them. So that in vain should Maecenas attempt to draw me forth into action, or his weak insinuations provoke me to a reply; were I not prompted to take notice of his opposition, more by what the Public might imagine by my silence, than the fear that his arguments had done away my 5.10.3

positions, or that his aspersions would rest with generous breasts.[6] When I saw so respectable a Signature in a paper to day, I cannot but confess that

Jure perhorrui
Late conspicuum tollere verticem,
Maecenas equitum decus![7]

I was afraid lest I had left myself open to the confutations of so shrewed a Judge, or advanced doctrines not tenable, when opposed by so great an observer of mankind—However, after having run his scribling over, I am led to believe, that his hopes will be compleatly frustrated; and his work, like the baseless fabrick of a vision, pass away, without any good thing to recommend it, besides an empty name. He says "he means to take into consideration the production of a writer, &c." Have his reasonings tended to do away the main point of that writer's address, (viz.) that the President should not be re-eligible? Or have they only shewn a malevolence, which cannot be pardoned, although it may be overlooked? Are his arguments pointing to one mark, or are they wandering and unconnected?—He opposes Cato, but he asserts that "Frequency of election is the great preservative of the people's liberties." How contradictory then is he to himself? Cato has written for no other cause, than to investigate the nature and consequences of elections; and to prove by conclusions drawn from good premises, the impolicy of re-electing the President.—But it is asserted, that "Virtue is the principle of a Republic." In Plato's imaginary one, perhaps such an assertion might have had its weight; but in other Republics, and in modern times, I deny that Virtue alone is adequate to tumultuous operations—I say that mankind are more actuated by the fear of punishment, than the hope of reward; consequently that laws inflicting penalties, and providing against exigencies, are more forcible, than sweet allurements to the general good.[8] Even supposing that the present age were entirely virtuous, and patriotic; are we to rest so supine with that conviction, as to pay no regard to the calls of posterity? Much has been done already, to snatch us from the oppressions of a Tyrant; but still a great deal is unfinished. We are obligated to defend to our children, by our wisdom, what we have gained by our valour; and to hand down to them a well regulated government. If we let slip this opportunity, and do not protect our constitution from every advantage being taken of it, in a future day we will surely repent our folly. We will see what a miserable thing it is when a law is vague and improperly penned. And as a learned Marquis expresses himself, we shall not enjoy the benefit of being governed by the letter of the law, but be led along according to the prevalence of faction, or the gust of passion.[9] And I dare assert, that although the other parts of the intended constitution be wisely determined; yet if the Presidentship be heedlessly attended to, as trusting to virtuous Citizens, and he be re-eligible; if ever America be en-

slaved by any fault in her constitution, it will be by the ambition of a President.

It is denied, and that *boldly* by my opponent, that the President would be cloathed with the robes of Royalty—Well may he deny, what has never been asserted—If Cato said that he would be possessed of Royalty, he afterwards informed the Public how he would be understood. He pointed out regal qualities with which the President would be invested, and so far he would be cloathed with Royalty. But in order to give some colour to his assertions, Maecenas has quoted Montesquieu, and shewn the shallowness of his reasoning.[10] Truth is ever apparent, it requires no borrowed garb, no authorities to support her intrinsick grandeur; but falshood ever resorts to what she thinks will protect, and which in the end, like an ungrateful friend, will desert her when she has most need of assistance. The proper definition of Royalty is "the administration of certain powers appertaining to the most exalted station," and whoever possesses any of these, is possessed in a greater or less degree of Royalty. But my oppugner says "that no title of nobility shall be granted by the Congress, and no person holding any office under Congress shall accept any title from any foreign King, State, or Empire." As he has given me permission, I will refer, and beg him to do so likewise, to the 9th Sect. of the 1st Art, of the resolves of the convention: where he will find there is still an opening for dignities and titles *with the consent of Congress,* which he has artfully skipped over, and forgotten to mention. When a writer of this sort steps forth, giving one half of the Text he comments upon, and suppressing the other if it be not for his purpose; are we not to conclude that his intent is more to puzzle with opposition, than to convince with fair reasoning? Are we not to imagine that his desire is more to thwart public measures, than to be actuated by generous motives to the public weal? With regard to what Cato advanced in a former paper, what was the end he had in view? Was it not proving the dangers attending the re-election of a President? Has Maecenas by his false conclusions, and badly applied arguments, weakened his reasons tending to that point? No. As waves following waves are nevertheless broken, and turned aside by the opposing rock; so have all Maecenas's arguments been foiled by truths, and his every effort rendered feeble, and ineffectual. His writing is half filled up with quotations, which prove nothing even in his own favor: And his conclusion takes away even what ground he might have gained: for it shews that he did not know what he intended to confute. And he finishes with saying, "that from what he has said, the President will have no powers, but which are essentially necessary for the executory department."[11] Is it not distressing that I must inform this new warrior in the lists of opposition, that Cato never opposed any of the President's powers; for he saw that an officer without power, would be *corpus sine capite*. His only endeavours were to set forth those powers, in such a light: as to persuade his countrymen of the

5.10.4

necessity of restricting the President in the enjoyment of his office. It was to that point his whole attention was bent, and there he hopes now to come off victorious. So that notwithstanding his opponents thoughtful motto, and asserting style; his solecisms and his sophistical reasoning, he has wandered from his mark, and *Parturient montes, nascetur-ridiculus mus.*[12]

5.10.5 Of the Public, now do I take my leave; hoping that I have advanced nothing, which modesty did not dictate, and patriotism support. And trusting that if any thing unguarded may have escaped me, it will be imputed to the impetuosity of passions eager to advance my Country's good; than to any sinister views, which can never find a resting place in the breast of

Cato.

December 6, 1787.

1. Cicero, *Pro L. Murena,* para. 84. "We are in a situation of extreme danger; there is no means now of repairing the losses we have already sustained, or of recovering the ground we have lost."

2. The original reads "and."

3. See Monroe 5.21.12 n. 3.

4. Maecenas points out that the recess appointments expire at the end of the next session of the Senate and that the President can only adjourn the Congress to an indefinite time when the two houses disagree respecting the time of adjournment. *State Gazette of South Carolina* 6 December 1787.

5. See Charles Pinckney's *Observations on the Plan of Government Submitted to the Federal Convention* (Farrand III, 111), which was being reprinted in the *State Gazette of South Carolina* at this time. For other Federalist arguments in defense of reeligibility, see Federal Farmer XIV, 2.8.179 n.107, and Elliot II, 293, 321; Elliot III, 485; Elliot IV, 103–4, 315; on rotation see Smith 6.12.27 n. 25.

6. Maecenas' reply to Cato's first essay appeared in the *State Gazette of South Carolina* 6 December 1787.

7. Horace, *Carmina* 3.16.18: "O Maecenas, gem of Roman knighthood, I have justly dreaded to raise the head that can be seen from afar."

8. On Federalist reliance on virtue and wisdom in rulers see Federal Farmer VIII, 2.8.110 n. 72; for other related references see Federal Farmer IV, 2.8.58 n. 44; Smith 6.12.34 n. 32.

9. This is probably a reference to Beccaria, *An Essay on Crimes and Punishment,* chs. 3 and 4 of which contain the substance, though not the language, of Cato's remark. See Federal Farmer VII, 2.8.97 n. 61, for a discussion of editions of Beccaria's essay.

10. "What is the principle of Monarchy? The celebrated Montesquieu says 'it supposes pre-eminences, Rank, and likewise a Noble descent' " (*The Spirit of Laws* III, ch. 7). *State Gazette of South Carolina* 6 December 1787.

11. Ibid. Maecenas went on to conclude: "Let the Americans be virtuous—let them be firm supporters of Republicanism—let them have confidence in their representatives—then their Liberties will be secured to them, and peace and prosperity will ensue."

12. Horace, *Ars Poetica* 139. "Mountains will be in labor, there will be born a ridiculous mouse."

Essay by Tamony

VIRGINIA INDEPENDENT CHRONICLE
9 January 1788

This essay is a rather crude denunciation of the provisions for the Executive in the proposed Constitution; it is of some small interest because it is referred to by Publius in *The Federalist* no. 69, p. 465n. The essay was reprinted in the Philadelphia *Independent Gazetter* on 1 February, from which it was picked up and reprinted by the *New York Journal* on 8 February.

To the Freeholders of America.

When important subjects demand discussion, they ought to be treated with coolness and moderation, reason should be alone appealed to, and meet no interruption from passion or prejudice. 5.11.1

Those who contend for the new Constitution without amendment think differently, or must condemn their own assertions, for in place of ascertaining how natural rights are secured, or government prudently restrained, they continually exclaim in a tone that assumes authority, "rejection must precipitate into the gulphs of destruction,—adoption leads to national happiness and dignity—men whose fortunes are involved may dread an effective administration and join those who under a fœderal system, would lose an importance dearer to them, than the welfare of their country."

Listen Americans, with caution to declamatory invective, patriotism scorns such language, and recoils from the idea of inflaming prejudice to reduce reflection, the interest of your country requires mental exertion, joined to a manly firmness, that may be compared to the steadiness of time, rises superior to the keenness of death. 5.11.2

Such sentiments exalt human nature, they have acquired one glorious revolution, and must be banished from your breasts, before you can embrace a Constitution, which does not secure a minority of the states, from local oppression, [and] is open to the encroachments of aristocracy, the ambition of an individual.

5.11.3 Happily for America the enlightened wisdom of a Virginia Assembly, has empowered their constituents, to investigate the truth or falsehood of the above assertions, by enacting that their Convention should proceed to a full discussion, and be freed from those fetters artifice wished to impose, under the specious pretence, of confining debate within the compass of absolute rejection or adoption.

5.11.4 The extent thus opened for speculative enquiry, joined to real magnitude in the object, may be styled by enthusiasm or horizon, [which] the eyes of few mens understanding can steadily behold[;] the expression, though poetically just, reduced to common sense, means importance, and instead of superseding the duty incumbent on freeholders to judge for themselves, renders the neglect of doing so, *treason against their country*. What man capable of enjoying that liberty Divine Providence gives as common inheritance to mankind, will at such a crisis restrain his mental faculties from examining a temple built by men equally mortal with himself, for the residence of constitutional freedom, despotism may enjoin a silent reverence, free governments command enquiry, and owe existence to that animation enquiry creates. That citizen who feels and avows such a maxim, need not apologize for collecting the following observations on the fœderal fabric.

5.11.5 Force seems its ruling principle—Forts and garrisons are provided for, a standing army must follow, the celebrated Doctor Price thus addresses Americans, "God forbid that standing armies should ever find an establishment in America[. T]hey are every where the grand support of arbitrary power and the chief source of the depression of mankind[. N]o wise people will trust their defence out of their own hands, or consent to hold their rights at the mercy of armed slaves."[1]

5.11.6 The office of president is treated with levity and intimated to be a machine calculated for state pageantry—Suffer me to view the commander of the fleets and armies of America, with a reverential awe inspired by the contemplation of his great prerogatives, though not dignified with the magic name of King, he will possess more supreme power, than Great Britain allows her hereditary monarchs, who derive ability to support an army from annual supplies, and owe the command of one to an annual mutiny law.[2] The American President may be granted supplies for two years, and his command of a standing army is unrestrained by law or limitation.

5.11.7 As to supplies, the term may be shortened; but such a measure implying want of confidence in the first magistrate, will probably be postponed till the hour of danger arrives and commonwealths be exposed to that hazardous situation, emphatically called deathbed repentance. Expectation from such a source may be deemed visionary, and reflection must expel even hope to confess, a mutiny law must owe existence to a general Convention, as the mode prescribed by article the 5th—for the president being by the people made commander of an army, is not subject in that command to a legislative body. Pause America—suspend a final affirmation, till you contemplate

what may ensue—Do not contemn the declarations of Locke, Sydney, Montesquieu, Raynal, whose writings are legacies to the present and future ages, they unite in asserting that annual supplies and an annual mutiny law, are the chief dykes man's sagacity can raise against that torrent of despotism, which continually attempts to deluge the rights of individuals. You are told impeachment will stem the flood, a legislative body, sixty-five in number, are to march in formidable array, to a tribunal of twenty-six, and summons the commander of an army sworn to obey him—the event can be foreseen without suspicion of second sight, for anticipation may with confidence announce, that the bauble of a mace, hazarded in the mouth of a mortar, would be speedily conveyed, to that "bourn from whence no traveller returns."[3]

Had the Constitution said, the president can do no wrong, nor shall he be re-elected—corruption in the man might be guarded against by that rotation, which inculcates the idea of certain dissolution, and a council answerable to the people for consenting to, or advising measures, would cautiously give their sanction to a ruler whose official shield, must inevitably revert to dust. 5.11.8

Tamony.

Virginia, Dec. 20, 1787.

1. Richard Price, *Observations on the Importance of the American Revolution and the Means of Making it a Benefit to the World* (1784), "Of Peace."

2. Publius denies that the king's prerogative as commander-in-chief derives from an annual mutiny bill, contending on the authority of Blackstone that the prerogative is immemorial. *The Federalist* no. 69, p. 465n.

3. *Hamlet* act 3, sc. 1.

Speeches of Rawlins Lowndes in the South Carolina Legislature

January 1788

In South Carolina, on 16, 17, and 18 January 1788, the House of Representatives debated whether or not to provide for a convention to consider the proposed Constitution. Rawlins Lowndes, the prominent South Carolina lawyer, judge, stateman, and former state president, did not expect his pro-Constitution constituents in Charleston to elect him to the convention and therefore took advantage of the legislative debate to lay out his reasons for opposition. Confronted by a number of able Federalists, Lowndes carried the opposition almost single-handed.[1] His speeches are especially interesting for their thoughtful presentation of the Southern point of view. All that has been preserved of these speeches, except for a couple of brief interventions in debate, is reprinted here, taken from the contemporary publication of the debates, *Debates Which Arose in the House of Representatives of South Carolina on the Constitution Framed for the United States by a Convention of Delegates Assembled at Philadelphia* (Charleston 1788) 15–17, 25–28, 39–41.[2]

It appears that Lowndes was in fact elected to the ratifying convention but declined to serve.[3] "He knew that he had failed, and accepted defeat."[4] He wished, he said in the last speech printed here, "for no other epitaph than to have inscribed on his tomb, here lies the man that opposed the Constitution, because it was ruinous to the liberty of America."

1. Yet in the decisive and very close (76 yes and 75 no) vote on whether to call a convention on 12 May 1788, Lowndes voted yes, thus throwing away, in the words of one commentator, "the only chance offered him of keeping South Carolina out of the Federal Union" (review of Ravenel's *The Life and Times of William Lowndes* in *The South Carolina Historical and Genealogical Magazine* II [1901], 252). It does not seem possible to reconstruct satisfactorily his reasons for this action or for his absence from the convention that finally met (see below, note 3). It may be that Lowndes simply felt that he could not stem the tide and that no practical purpose was to be served by persisting in an unpopular opposition; this is Rutland's view, *The Ordeal of the Constitution* 165.

2. This publication is reprinted in Elliot IV, 253–342. While the text of Lowndes' speeches is taken from the original 1788 edition, references to the debate in the notes that follow will be made to the more accessible Elliot.

3. There is a good deal of confusion about the reason for Lowndes' absence from the convention. George C. Rogers, Jr., has said that Lowndes' constituents "refused to elect him to the ratification convention." ("South Carolina Ratifies the Federal Constitution" *Proceedings of the South Carolina Historical Association*, 1961, p. 58). This seems to be confirmed by Lowndes' letter to General John Lamb of 21 June 1788 (in Leake, *Memoir of the Life and Times of General John Lamb* 308), to the effect that an open avowal of his sentiments did not meet with the concurrence of his "constituents in Charleston, and I was, therefore, rejected in their choice of delegates for the Convention." On the other hand, Aedanus Burke wrote to Lamb on 23 June 1788 "that Mr. Lowndes would not serve in the Convention, declining to take his seat; out of disgust to some leading men in the parish that sent him, he abandoned a Cause, which, I believe, he thought a just one" (John Lamb Papers). And Mrs. St. Julien Ravenel (*Life and Times of William Lowndes of South Carolina* [Boston 1901] 32) says that Lowndes "refused to serve" in the ratifying convention, that "the people of St. Bartholomew's were anxious to send him, but he refused firmly." *The Dictionary of American Biography* (XI, 472–73) also reports, "though he was elected in the constitutional convention he did not serve." The facts seem to be that Lowndes was rejected in Charleston; that he was elected, perhaps without his consent, by his home parish of Saint Bartholomew's (which he had also represented in the South Carolina Legislature), but that he declined to serve. The probability of this explanation is strengthened by a manuscript list of "members of the convention" in South Carolina in May 1788, located in the South Carolinian Library, University of South Carolina, on which, I am informed by Professor Carl Vipperman, Lowndes' name was included among the delegates from Saint Bartholomew but then crossed out and another name added, suggesting that Lowndes was elected but declined to serve, for reasons that remain obscure. See Rutland, *The Ordeal of the Constitution* 166.

4. Ravenel, *Life and Times of William Lowndes of South Carolina* 32.

16 January 1788

Mr. Lowndes desired gentlemen to consider that his antagonists were 5.12.1
mostly gentlemen of the law, who were capable of giving ingenious explanations to such points as they wished to have adopted.[1] He explained his opinion relative to treaties to be, that no treaty concluded contrary to the express laws of the land could be valid. The king of England, when he concluded one, did not think himself warranted to go further than to promise that he would endeavor to induce his parliament to sanction it. The security of a republic is jealousy; for its ruin may be expected from unsuspecting security; let us not therefore receive this proferred system with implicit confidence, as carrying with it the stamp of superior perfection; rather let us compare it with what we already possess with what we are offered for it. We are now under government of a most excellent constitution—one that had stood the test of time, and carried us through difficulties generally supposed to be insurmountable—one that had raised us high in the eyes of all nations, and given to us the enviable blessings of liberty and independence—a constitution sent like a blessing from heaven, yet we were impatient to change it for another, that vested power in a few men to pull down that fabric which we had raised at the expence of our blood.[2] Charters ought to be considered

as sacred things; in England an attempt was made to alter the charter of the East India company, but they invoked heaven and earth in their cause—moved lords, nay even the king in their behalf, and thus averted the ruin with which they were threatened. It had been said, that this new government was to be considered as an experiment;[3] he really was afraid it would prove a fatal one to our peace and happiness—an experiment! what risque the loss of political existence on experiment? No, Sir, if we are to make experiments, rather let them be such as may do good, but which cannot possibly do any injury to us or our posterity.[4] So far from having any expectation of success from such experiments, he sincerely believed that when this new constitution should be adopted, the sun of the southern states would set never to rise again. To prove this, he observed, that six of the eastern states formed a majority in the house of representatives (in the enumeration he passed Rhode Island, and included Pennsylvania.) Now was it consonant with reason—with wisdom—with policy, to suppose that in a legislature where a majority of persons sat whose interests were greatly different from ours, that we had the smallest chance of receiving adequate advantages? certainly not. He believed the gentlemen that went from this state to represent us in the convention, possessed as much integrity, and stood as high in point of character as any gentlemen that could have been selected; and he also believed, that they had done every thing in their power to procure for us a proportionate share in this new government; but the very little which they had gained proved what we might expect in future; and that the interest of the Northern states would so predominate, as to divest us of any pretensions to the title of a republic. In the first place, what cause was there for jealousy of our importing negroes? Why confine us to 20 years, or rather why limit us at all? For his part he thought this trade could be justified on the principles of religion, humanity and justice; for certainly to translate a set of human beings from a bad country to a better, was fulfilling every part of those principles.[5] But they don't like our slaves, because they have none themselves, and therefore want to exclude us from this great advantage; why should the southern states allow of this without the consent of nine states? (Judge Pendleton observed, that only three states, Georgia, South Carolina, and North Carolina, allowed the importation of negroes, Virginia had a clause in her constitution for this purpose, and Maryland, he believed, even before the war, prohibited them.) Mr. Lowndes observed, that we had a law prohibiting the importation of negroes for three years, a law he greatly approved of, but there was no reason offered why the southern states might not find it necessary to alter their conduct, and open their ports.—Without negroes this state would degenerate into one of the most contemptible on the union, and cited an expression that fell from general Pinckney, on a former debate, that whilst there remained one acre of swamp land in South Carolina, he should raise his voice against restricting the importation of negroes. Even in granting the importation for 20 years, care

had been taken to make us pay for this indulgence, each negro being liable on importation to pay a duty not exceeding ten dollars, and in addition to this were liable to a capitation tax. Negroes were our wealth, our only natural resource, yet behold how our kind friends in the North were determined soon to tie up our hands, and drain us of what we had.[6]—The Eastern states drew their means of subsistence in a great measure from their shipping, and on that head they had been particularly careful not to allow of any burthens—they were not to pay tonnage or duties, no not even the form of clearing out—all ports were free and open to them! Why then call this a reciprocal bargain, which took all from one party to bestow it on the other? (Major Butler observed, that they were to pay five per cent. impost) This Mr. Lowndes proved must fall upon the consumer. They are to be the carriers, and we being the consumers, therefore all expences would fall upon us. A great number of gentlemen were captivated with this new constitution, because those who were in debt would be compelled to pay; others pleased themselves with the reflection that no more confiscation laws could be passed; but those were small advantages in proportion to evils that might be apprehended from the laws that might be passed by Congress, whenever there was a majority of representatives from the Eastern states, who were governed by prejudices and ideas extremely different from ours. He was afraid in the present instance that so much partiality prevailed for this new constitution, that opposition from him would be fruitless; however he felt so much the importance of the subject, that he hoped the house would indulge him in a few words to take a view comparatively of the old constitution and the new one, in point of modesty.—Congress, labouring under many difficulties, asked to regulate commerce for 21 years, when the power reverted into the hands of those who originally gave it; but this infallible new constitution eased us of any more trouble, for it was to regulate commerce *ad infinitum;* and thus called upon us to pledge ourselves and posterity forever in support of their measures; so that when our local legislature had dwindled down to the confined powers of a corporation, we should be liable to taxes and excise; not perhaps payable in paper, but in specie. However they need not be uneasy, since every thing would be managed in future by great men, and great men every body knew were incapable of acting under influence of mistake or prejudice—they always were infallible—so that if at any future period we should smart under laws which bore hard upon us, and think proper to remonstrate, the answer would probably be—Go, you are totally incapable of managing for yourselves—go mind your private affairs—trouble not yourselves with public concerns—*mind your business*—the latter expression was already the motto of some coppers in circulation, and he thought it would soon be the style of language held out towards the southern states. The honorable member apologized for going into the merits of this new constitution, when it was ultimately to be decided on by another tribunal, but understanding that he differed in opinion with his constituents,

who were opposed to electing any person as a member of the convention that did not approve of the proposed plan of government; he should not therefore have an opportunity of expressing those sentiments which occurred to him on considering the plan for a new federal government. But if it was sanctioned by the people it would have his hearty concurrence and support. He was very much originally against a declaration of independency—he also opposed the instalment law, but when they received the approbation of the people, it became his duty as a good citizen to promote their due observance.

17 January 1788

5.12.2 Mr. Lowndes declared himself almost willing to give up his post; finding he was opposed by such a phalanx of able antagonists, any one of them possessing sufficient abilities to contend with him, but as a number of respectable members, men of good sense, though not in the habit of speaking in public, had requested that he would state his sentiments, for the purpose of gaining information on such points as seemed to require it, rather in compliance therefore with their wishes than any inclination on his part, he should make a few further observations on the subject. Much had been said from different parts of the house against the old confederation, that it was such a futile, inefficient, impolitic government as to render us the objects of ridicule and contempt in the eyes of other nations; he could not agree to this, because there not did appear any evidence of the fact, and because the names of those gentlemen who had signed the old confederation were eminent for patriotism, virtue and wisdom; as much so as any set of men that could be found in America, and their prudence and wisdom particularly appeared in the care which they had taken sacredly to gaurantee the sovreignty of each state. The treaty of peace expressly agreed to acknowledge us as free, sovereign and independent states,[7] which privileges we lived at present in the exercise of; but this new constitution at once swept those privileges away, being sovereign over all, so that this state will dwindle into a mere skeleton of what it was; its legislative powers would be pared down to little more than those now vested in the corporation; and he should value the honor of a seat in the legislature in no higher estimation than a seat in the city council. Adverting to the powers given to the president, he considered them as enormous, particularly in being allowed to interfere in the election of members in the house of representatives; astonishing that we had not this reserved to us, when the senators were to be chosen from that body—things might be so managed that the different legislatures should be limited to the passing a few laws for regulating ferries and roads. The honorable gentle-

man went into an investigation of the weight of our representation in the proposed government, which he thought would be merely virtual, similar to what we were allowed in England, whilst under the British government; we were then told that we were represented in parliament, and this would in the event prove just such another. The mode of chosing senators was exceedingly exceptionable; it had been the practice formerly to chuse the senate or council for this state from that house, which practice proved so inconvenient and oppressive, that when we framed our present constitution, great care was taken to vest the power of electing the senate originally with the people, as the best plan for securing their rights and privileges. He wished to know in what manner it was proposed to elect the five representatives—was it [to] be done in this city—or would some districts return one member, and others none at all? Still greater difficulties would be found in the choice of a president, because he must have a majority of 91 votes in his favor. For the first president there was one man to whom all America looked up, (General Washington,) and for whom he most heartily should vote; but after that gentleman's administration ceased, where could they point out another so highly respected as to concenter a majority of 91 persons in his favor, and if no gentleman should be fully returned, then the government must stand still.—He went over much of the ground which he had trod the preceding day, relative to the eastern states having been so guarded in what they had conceded to gain the regulation of our commerce, which threw into their hands the carrying trade, and put it in their power to lay us under payment of whatever freightage they thought proper to impose; it was their interest to do so, and no person could doubt but they would promote it by every means in their power. He wished our delegates had sufficiently attended to this point in the convention, had been more attentive to this object; and taken care to have it expressed in this constitution that all our ports were open to all nations; instead of putting us in the power of a set of men who may fritter away the value of our produce to little or nothing, by compelling payment of exorbitant freightage. Neither did he believe it was in the power of the Eastern states to furnish a sufficient number of ships to carry our produce; it was indeed a general way of talking that the Eastern states had a great number of seamen—a vast number of ships, but where were they? Why did not they come here now when ships are greatly wanted? he should always wish to give them a preference, and so no doubt would many other gentlemen, and yet very few ships came here from the Eastern states. Another exceptionable point was, that we were to give up the power of taxing ourselves. During our connexion with Great Britain, she left us the power of raising money in any way most convenient: a certain sum was only required to defray the public wants, but no mode of collecting it ever prescribed. In this new constitution every thing is transferred, not so much power being left us as Lord North offered to guarantee to us in his conciliatory plan. Look at the articles of union ratified between England and Scotland; how

cautiously had the latter taken care of her interest in reserving all the forms of law—her representation in parliament—the right of taxation—the management of her revenue—and all her local and municipal interests.[8] Why take from us the right of paying our delegates, and pay them from the federal treasury? He remembered formerly what a flame was raised in Massachusetts, on account of Great Britain assuming the payment of salaries to judges and other state officers; and that this conduct was considered as originating in a design to destroy the independence of their government. Our local expences had been nearly defrayed by our impost duty, but now that this was given away, and thrown into a general fund, for the use of all the states indiscriminately, we should be obliged to augment our taxes to carry on our local government, notwithstanding we were to pay a poll tax for our negroes. Paper money too was another article of restraint, and a popular point with many; but what evils had we ever experienced by issuing a little paper money to relieve ourselves from any exigency that pressed us? We had now a circulating medium which every body took, we used formerly to issue paper bills every year, and recal them every five, with great convenience and advantage—had not paper money carried us triumphantly through the war—extricated us from difficulties generally supposed to be insurmountable, and fully established us in our independence, and now every thing is so changed that an entire stop must be put to any more paper emissions, however great our distress may be. It was true no article of the constitution declared there should not be jury trials in civil cases, yet this must be implied, because it stated that all crimes, except in cases of impeachment, shall be tried by a jury, but even if trials by jury were allowed, could any person rest satisfied with a mode of trial which prevents the parties from being obliged to bring a cause for discussion before a jury of men chosen from the vicinage, in a manner conformable to the present administration of justice, which had stood the test of time and experience, and ever been highly approved of. Mr. Lowndes expatiated some time on the nature of compacts—the sacred light in which they were held by all nations, and solemnly called on the house to consider whether it would not be better to add strength to the old confederation, instead of hastily adopting another? asking, whether a man could be looked on as wise, who, possessing a magnificent building, upon discovering a flaw, instead of repairing the injury should pull it down, and build another? Indeed he could not understand with what propriety the convention proceeded to change the confederation; for every person with whom he had conversed on this subject concurred in opinion that the sole object of appointing a convention was to enquire what alterations were necessary in the confederation, in order that it might answer those salutary purposes for which it was originally intended.—He recommended, that another convention should be called, and as the general sense of America appeared now to be known, every objection could be met on fair grounds, and adequate remedies applied

where necessary; this mode of proceeding would conciliate all parties because it was candid, and had a more obvious tendency to do away all inconveniencies, than the adoption of a government which perhaps might require the bayonet to enforce it; for it could not be expected that the people, who had disregarded the requisitions of congress, tho' expressed in language the most elegant and forcible that he ever remembered to have read, would be more obedient to the government until an irresistible force compelled them to do so. Mr. Lowndes concluded a long speech with a glowing eulogy on the old confederation, and challenged his opponents, whilst one state objected, to get over the section which said, "the articles of this confederation shall be inviolably observed in every state, and the union shall be perpetual; nor shall any alteration, at any time hereafter be made in any of them, unless such alterations be agreed to in a congress of the United States, and be afterwards confirmed by the legislatures of every state."[9]

18 January 1788

Mr. Lowndes observed, that he had been accused of obstinacy in standing out against such a formidable opposition, but he could sincerely assure the house that he was as open to conviction as any gentleman on that floor; yet he never would allow himself to be drawn into the adoption of specious arguments, for such he considered many of those now opposed against him to be. Indeed some gentlemen had departed from their usual candor in giving an interpretation to his arguments which they did not merit. In one instance it had been stated as if he was of opinion that treaties had not the force of law;[10] this was going too far; he did not recollect that he asserted any more than that the king of Great Britain had not a legal power to ratify any treaty which trenched on the fundamental laws of the country. He supposed a case under the dispensing act of William and Mary, asking, if the king had made a treaty with the Roman Catholics, could that which was excepted by the law ever be considered as paramount. The honorable gentleman again took an ample review of the old confederation, on which he dwelt with fervency for some time, and ridiculed the depraved inconstancy of those who pant for the change. Great stress was laid on the admirable checks which guarded us under the new constitution from the encroachments of tyranny, but too many checks in a political machine must produce the same confusion as in a mechanical one, that of throwing all into confusion. But supposing we considered ourselves so much aggrieved as to reduce us to the necessity of insisting on redress? what probability had we of relief? Very little indeed.—In the revolving on misfortune some little gleams of comfort resulted from an hope of being able to resort to an impartial

5.12.3

tribunal for redress; but pray what reason was there for expectancy that in congress the interests of five southern states would be considered in a preferable point of view to the nine Eastern ones? With respect to migration from the Eastern states to the Northern [Southern?] ones,[11] he did not believe people would ever flock here in such considerable numbers, because our country had generally proved so uncomfortable, from the excessive heats, that our acquaintance during the heats is rather shunned than solicited. The honorable gentleman mentioned that he had sent for a person from Europe, who did not long survive his introduction here, falling a sacrifice to the baneful effects of fogs and swamps, so that from our limitation of importing negroes after the term of twenty years, instead of rising in representation we should gradually degenerate. He treated those fears of our falling a prey to foreigners as one of those arguments tending to precipitate us into measures inimical to our natural interest; for was it to be supposed that the policy of France would ever suffer America to become an appendage of the crown of Great Britain; or that Great Britain, equally jealous of France, would permit her to reduce us to subjection!—Our danger of ruin should rather be apprehended from dissentions amongst ourselves—from our running into debt without any intention to pay; that was the rock on which we might split, rather than foreign enemies; and therefore all those arguments for establishing the necessity of a navy and standing army were nugatory and entitled to very little attention.[12]

5.12.4 It was urged, that until we had a navy powerful enough to protect us, our liberties and property were held only on courtesy; but if gentlemen adverted where this navy, so necessary, was to come from, not from the southern states, but the northern ones, they would easily perceive to whom this country would belong. It was true, the old confederation was a mere paper defence, but then it was a good proof on our behalf if we were overcome by unmerited wrongs. Some had made this a question, will you join or will you be single? for his part he did not think matters had come to such a crisis; rather let us comply with our federal connection, which not yet being broken admits of being strengthened. A gentleman had instanced Vattel, in support of his argument, and laid down from that author an opinion, that where parties engaged in the performance of an obligation, should any one of them fly off from his agreement, that then the original compact was null and void.[13] He had ingeniously applied this to our present continental situation, and contended, that as some of the states acted in a refractory manner towards the continental union, and obstinately refused a compliance on their parts with solemn obligations, that of course the confederation was virtually dissolved; but Vattel merely recited such a case as where only a part of a confederation was broken; whereas ours was totally different, every state in the union having been uniform in refusing a compliance with the requisition of congress. Some gentlemen had advanced a set of assertions to prove that the eastern states had greatly suffered in the war,[14] pray

how had they suffered? did they not draw from the continental treasury large sums of money? was not every expence incurred by them defrayed out of the continental coffers? Another great advantage held out was, that we should be eased in future from the obligation and difficulty of defraying the expences of delegates; had we gained so much by this, when we had given up the very means of furnishing this sort of supply, formerly in our option? As to the taxes, undoubtedly they must be increased under this new government: we paid at present 2 dollars per head upon our negroes, but the expences attending our pompous government might increase this expence into six dollars per head, and this enormous sum collected by a sort of foreign power; for did any man that knew America suppose such tax will be easily paid? But if there was such an universal propensity to set up this golden image, why delay its inauguration? Let us at once go plump into adoration of it—let us at once surrender every right which we at present possess. A material objection of his to the offered plan was that the president would have a power to call both houses at what time and place he thought proper; suppose a political cause for partiality, might he not so arrange things, as to carry a favorite point, by assembling the federal government to the ruin or detriment of those states he meant to crush, and laws be enacted before those in extreme parts of the country knew any thing of their tendency; surely some restrictions as to time of meeting, should have been specified. The president had also the power of adjourning to any day that he thought proper. In our old constitution no such power was given to the chief magistrate to adjourn or dissolve. On the whole this was the best preparatory plan for a monarchical government that he had read; the constitution of Great Britain he considered as the best monarchical one that he ever perused, and this new government came so near to it, that instead of our changing from a republic to a monarchy, it was what every body must naturally expect—How easy the transition, no difficulty occurred in finding a king; the president was the man proper for this appointment. The senate hail him king, constituted according to Mr. Adams's description, from the *well born,*[15] will naturally say to one another, "You see how we are situated, certainly it is for our country's benefit that we shall be all lords, and lords they are."

Mr. Lowndes concluded his speech with thanking the house for their very great indulgence in permitting him to take up so much time. He hoped that the vast importance of the subject would plead his excuse; he also thanked those gentlemen on the other side of the question for the candid, fair manner in which they had answered his arguments. Popularity was what he never courted, but on this point he spoke merely to point out those dangers to which his fellow citizens were exposed; dangers that were so evident, that when he ceased to exist, he wished for no other epitaph than to have inscribed on his tomb, here lies the man that opposed the constitution, because it was ruinous to the liberty of America. 5.12.5

1. Lowndes had objected to the power of the President and a small number of senators (ten, being two-thirds of a quorum of fourteen) to conclude treaties, which would become part of the supreme law of the land, a power not enjoyed by the most despotic prince. He was challenged by several members who contended that treaties were supreme law under the Articles of Confederation and were thus treated by state judges and that the kings of England and France did in fact have the power to conclude binding treaties without parliamentary assent. This subject was discussed at length on the following day by General Charles Cotesworth Pinckney, Elliot IV, 277–81.

2. Henry 5.16.2. Chancellor John Matthews "confessed himself astonished at hearing such encomiums on the Articles of Confederation, as if they had carried us victoriously through the war, when, in fact, they were not ratified until the year 1781; and if the Confederation had been in force in 1776, this country would have inevitably been lost, because, under it, Congress had not authority to give General Washington the powers of a dictator at Valley Forge. Surely the honorable gentleman must be sensible that the success of Congress depended on the explicit confidence of the people; the voice of Congress had the force of law, and was cheerfully and readily obeyed." Elliot IV, 298. See also E. Rutledge, ibid. 274–75, and General Pinckney, ibid. 281–82. On the sacredness of contracts and the dangers of innovation see Republican Federalist 4.13.15 and n. 11.

3. Charles Pinckney, who led off the debate, contended that the question of the limits to which a republic might extend, uniting liberty and safety, was to be tried for the first time by the United States. Elliot IV, 262.

4. Mr. Edward Rutledge replied: "The gentleman would have done well to have defined the kind of power that could do no harm. The very idea of power included a possibility of doing harm; and if the gentleman would show the power that could do no harm, he would at once discover it to be a power which could do no good." Elliot IV, 276.

5. This argument was strikingly rare during the debate over the Constitution, in contrast to later periods. See Martin 2.4.65 n. 24. See Herbert J. Storing, "Slavery and the Moral Foundations of the American Republic," in *The Moral Foundations of the American Republic,* ed. Robert Horwitz (Charlottesville 1977).

6. General Pinckney replied: "I am of the same opinion now as I was two years ago, when I used the expressions the gentleman has quoted—that, while there remained one acre of swamp-land uncleared of South Carolina, I would raise my voice against restricting the importation of negroes. I am as thoroughly convinced as that gentleman is, that the nature of our climate, and the flat, swampy situation of our country, obliges us to cultivate our lands with negroes, and that without them South Carolina would soon be a desert waste. . . . It was alleged, by some of the members who opposed an unlimited importation, that slaves increased the weakness of any state who admitted them; that they were a dangerous species of property, which an invading enemy could easily turn against ourselves and the neighboring states; and that, as we were allowed a representation for them in the House of Representatives, our influence in government would be increased in proportion as we were less able to defend ourselves. 'Show some period,' said the members from the Eastern states, 'when it may be in our power to put a stop, if we please, to the importation of this weakness, and we will endeavor, for your convenience, to restrain the religious and political prejudices of our people on this subject.' . . .

"By this settlement [incorporated into the Constitution] we have secured an unlimited importation of negroes for twenty years. Nor is it declared that the importation shall be then stopped; it may be continued. We have a security that the general government can never emancipate them, for no such authority is granted; and it is

admitted on all hands, that the general government has no powers but what are expressly granted by the Constitution, and that all rights not expressed were reserved by the several states. We have obtained a right to recover our slaves in whatever part of America they may take refuge, which is a right we had not before. In short, considering all circumstances, we have made the best terms for the security of this species of property it was in our power to make. We would have made better if we could; but, on the whole, I do not think them bad." Elliot IV, 285–86.

See also the argument by Barnwell that because of the interest of the North in the carrying trade the slave trade will never be abolished unless the Southern states decide to do it. Ibid. 296–97.

7. In the Treaty of Peace of 3 September 1783, "His Britannic Majesty acknowledges the said United States, viz. [naming them] to be free, sovereign, and independent States." William M. Malloy, ed., *Treaties, Conventions [etc.]* (Washington 1910) I, 587. General Pinckney denied what he took to be Lowndes' implication that "our independence had been granted us by the king of Great Britain," maintaining that the treaty does not grant but only acknowledges United States independence. Independence should be dated, Pinckney contended in lyrical terms, from the Declaration of Independence, in which the several states are not named, "as if it was intended to impress this maxim on America, that our freedom and independence arose from our union, and that without it we could neither be free nor independent. Let us, then, consider all attempts to weaken this Union, by maintaining that each state is separately and individually independent, as a species of political heresy, which can never benefit us, but may bring on us the most serious distresses." Elliot IV, 301–2.

8. See Edward Rutledge, Elliot IV, 298–300.

9. Articles of Confederation, Art. XIII. See Republican Federalist 4.13.10 n. 6.

10. This probably refers to remarks of General Pinckney; see Elliot IV, 277–81.

11. Mr. Edward Rutledge responded, "Several of the Northern States were already full of people: it was otherwise with us; the migrations to the south were immense, and we should, in the course of a few years, rise high in our representation, whilst other states would keep their present position." Elliot IV, 276–77.

12. Both General Pinckney and Edward Rutledge argued that a navy would be needed to maintain American independence. Ibid. 283–85, 299.

13. The reference is probably to General Pinckney who, in the speech preceding this one of Lowndes, had said: "The honorable gentleman says, compacts should be binding, and that the Confederation was a compact. It was so; but it was a compact that had been repeatedly broken by every state in the Union; and all the writers on the laws of nations agree that, when the parties to a treaty violate it, it is no longer binding." Ibid. 308. While General Pinckney is not reported as referring specifically to Vattel here, he did so earlier in the debates on the general obligation of compacts. Ibid. 278.

14. Mr. Robert Barnwell had paid eloquent tribute to the aid of the Eastern states to the Union and to the South: "When we stood with the spirit, but weakness, of youth, they supported us with the vigor and prudence of age. . . . He saw not a man who did not know that the shackles of the south were broken asunder by the arms of the north." Ibid. 292. And General Pinckney asked, "who have been the greatest sufferers in the Union, by our obtaining our independence? I answer, the Eastern States. They have lost every thing but their country, and their freedom." Ibid. 284.

15. John Adams, *Defence* I, preface (*Works* IV, 290–91). On the natural aristocracy see Federal Farmer VII, 2.8.97 n. 64.

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Essays by Republicus

(LEXINGTON) KENTUCKY GAZETTE
16 February and 1 March 1788

In his first essay, Republicus presents a straightforward but, for the Anti-Federalists, unusually theoretical account of the origin of civil government, the need for limiting constitutions (excluding all idea of prerogative), and the nature of representation. He contends that all of the branches of government, not just the legislature, are representatives of the people (5.13.2). He argues strongly against a bicameral legislature (5.13.7). In his second essay, the author directs his relatively radical views toward the proposed Constitution, reenforcing his argument against two houses of the legislature and his insistence on a strict numerical representation (5.13.12). He objects to the method of electing the President and to his dangerous powers and to the power of Congress to regulate the times, places, and manner of holding elections for the national legislature (5.13.13–14). He concludes with a very strong denunciation of the fugitive slave provision and the dangers of thus sanctioning, in a constitution devoted to liberty, the principle of slavery (5.13.14).

A reply by Mancius appeared, also in the Lexington *Kentucky Gazette*, on 23 February 1788.

16 February 1788

Mr. Bradford

5.13.1 Please to publish the anexed hints, perhaps they may have a tendency to rouse the attention of some judicious person to discuss the subject more at large.

> *pierce my vein,*
> *Take of the crimson stream meandering there,*
> *And chatechize it well, Apply your glass.*
> *Search more and probe it, if it be not blood*
> *Congenial with thine own.*
>
> Cowper[1]

So soon after the close of a bloddy and distressing war, which we have sustained in defence of the liberties and indefeasible rights of mankind; during which those rights have been investigated with the utmost precision: it may, to some, seem a little extraordinary to resume so trite a subject; but as there is a prospect of an aera near approaching, big with events highly, very highly interesting to these western districts; and as it seems, that some, even of our leading characters, have been too much hurried to have given those subjects so much of their attention as they seem to have merited; or may have forgotten some of the features peculiar to the picture of liberty; I beg leave to hold up to public view, some of the outlines of the charming portrait, in order to attach my fellow citizens to the original form from whence they are taken: and add a few very plain observations on civil government. In this I shall confine myself to civil liberty, and that natural liberty or freedom of mankind, in an unconnected state (or as some say, in a state of nature) from whence it arises: and shall first enquire what this natural freedom is, it is obvious at first sight, that this is neither more nor less than a power of self government, a performance of all our actions agreeable to our own will; or in plainer terms, it is a doing as we please; under the direction of reason, the great, primary, and never-ceasing law of nature. As long as any man does so he has a right to enjoy his person, life, and property, free from all molestation whatsoever; and were he able, even to repel the combined power of the world in any attempt to deprive him of either; and on this is founded a right of *equality:* for as one mans right is limited to the enjoyment, and defence of his own property; so every other mans right extends to the same limits, but no further, for it is inconceivable that an individual can of right, enjoy any possible possession, or happiness any part of which another person or even community of men can have a right to deprive him of: or that any two or more individuals, can at the same time justly claim or possess an exclusive right to any thing whatsoever; for what I wholy and rightfully claim or enjoy, every other man is wholy and rightfully excluded of claiming, or enjoying by this great and primary law of nature, and this it is which establishes a perfect natural equality among mankind, and excludes all right of one man to govern or controul the rightful actions, or property of another in any case whatsoever; and an universal, and unerring observation of, and obedience to this law, is what we call rectitude, or moral virtue: which, where it prevails, necessarily precludes all civil government; which is only substituted in the room of the aforesaid natural law, where its principles are not duly attended to, or its sanctions appear too distant, or feble. It is evident that all men act according to, or depart from this law of nature; in proportion as, on the one hand their reason, or on the other their passions and appetites, preponderate: but as universal observation assures us, that mankind are more generally actuated by their passions and appetites, than by their reason; something is necessary to restrain, controul, or at least to counteract those passions: hence the necessity of civil government; and on that necessity it originates: the lust of

5.13.2

power, or of property, would stimulate the strong, or the artful, to seize[?] the persons, or properties of the weak, or the simple, and appropriate them to their own use, in contempt of the sacred law of nature. Hence, mankind found it necessary to enter into solemn compacts of mutual defence, and security, and in those compacts, to establish certain rules, founded upon, or at least agreeable to, the universal reason of mankind, (the common law of nature) to which they should all be equally subject; as they rightfully, and originally were in their unconnected state, to that original law; and this only to secure to themselves that liberty, and those rights to which they as said above are all naturally, equally, and unalienably entitled. Thus it appears how civil government becomes a substitute for moral virtue: and that instead of infringing the rightful liberties of mankind, it tends to secure them: and by this criterion may every government be tried: that government which tends not to secure the lives, liberties and properties of every individual of the community, as far as the law of reason would have done, is unjust and iniquitious and merits not the name of civil government. I said above that civil government originates in necessity: I now add it originates with the people under that necessity. They form the compact, they prescribe the rules and they also enact them or delegate others to do it for them; who are indiscriminately, and in the proper sense of the word *their servants* and accountable to them and to them only how they execute those trusts; as really so as the man whom I employ for daily wages is accountable to me and to me only how he performs my business; and are therefore to be chosen by them, and that in a way perfectly consistent with the equality of their right; because if they have an equal natural right to legislative and executive power in all their different branches, which takes in all the powers that can exist in a state; none can have a right to exercise any of those powers, but by appointment or delegation: consequently those who are thus chose by them to the executive department are as really their representatives, as those similarly chosen to the legislative: This I think an observation of some consequence; all this power they are justly authorized to exercise and that in their own joint and equal right: for if at the time of entering into such compact, a compleat equality in point of right subsists; it ever ought to subsist as there can be no legitimate superior or even co-ordinate power, to destroy or diminish that equality. But it is not only necessary that government should be formed on principles of equal right; but also that those principles should be precisely delineated and guaranteed by the most solemn sanctions. This if you please we will call a constitution. There should also be woven into the very texture of that constitution certain antidotes or preservatives against corruption or degeneracy, and care should be taken by every member of the community, that those antidotes be duly administered. Otherwise tho they may begin their career on a very fair plain, yet, it may at last terminate in a precipice, which they may never discover till it be too late to retract.

And first the constitution should provide for a fair and equal representation.[2] That is that every member of the union have a freedom of suffrage and that every equal number of people have an equal number of representatives; for if the preceding sentiments are just, no one deprived of suffrage, ought (unless he voluntarily adopt it at least implicitly) to be under the controul or direction of such constitution, or any law made in consequence of it: it is no law to him[,] he is in respect of it, still in a state of nature: and without equality of numbers it would be unjust; for it is incontestable that if every man has an equal natural right to governing power, he has an equal right to every thing that represents it; and if we suppose for instance one district to contain one hundred inhabitants, and another a thousand: each entitled to send two representatives[;] if we suppose the former to be only duly represented, then there will be nine hundred in the latter not represented at all; But this is so plain a case that it is only strange that it should ever have been controverted. 5.13.3

But again it should provide against their holding those trusts for long terms. This would call into public service a greater variety of estimable characters; would beget an emulation who should serve their country the most essentially; and make it perhaps as fashionable a virtue to serve the interest of the public, as it has been formerly a vice to serve the private interest of some favorite family or worthless dependent. Besides, this is a security which the people owe to themselves, for the fidelity of their servants; and perhaps the only good security they can have: add to this temporary intervals of ineligibility, that they may in a private capacity feel all the good and evil effects resulting from their administration; and be prevented from acquiring any influence, dangerous to the liberty of the community. Who ever doubts the utility of this provisionary measure let him just recur to the state of the British government under the triennial and septennial parliaments: and he will soon be satisfied. 5.13.4

But it should also provide for its own stability and permanency: and that no law may ever come into existence the foundation of which is not found in those primary[?] principles: as the constitution comes immediately from the people; so ought the laws to flow immediately from the constitution; it should like a circle circumscribe all legislative power as the legislative ought to circumscribe the executive, and both take their form from the people as the great centre of all; it should with all the authority becoming the majesty of a free people from whence it proceeds command; hitherto shalt thou come but no further; for if it suffers itself to be broken in one instance, why not in a thousand; it become, like a bubble, its existence is no more and the issue may be fatal. 5.13.5

But lastly, and above all it should provide that no man or set of men whatsoever from within or without, should even[?] possess a power of controul, suspension, or negation, either permanent, or temporary, on or over any resolves, acts, procedures, or laws made by the people them- 5.13.6

selves, or their representatives duly chosen as above[,] for whenever this happens, their liberty expires, they are under the direction of a will different from, and superior to their own: and though they may still have the privilege of nominating those who possess that power, it is only the poor and degrading privilege of pointing out, among many tyrannical masters, whose lash they will chose to feel. In short they are slaves.

5.13.7 It has been disputed whether one house, or rather power of legislature be more eligible, or rather to be chosen than two.[3] I shall hazard a few random thoughts on that subject. And first, if an institution answers all the ends designed by the institution, as well as any other institution, or plan could have done, or can do, there remain no possibility of its doing more; it is therefore perfect, if anything is added it becomes a redundancy, consequently an imperfection. I hope twill not be denied, that a single legislative body, is capable of making laws, the perfection of those laws depend on the wisdom, virtue, and integrity of the legislature, but does it appear, that more wisdom, virtue, and integrity, will, or can possibly be found in two houses than in one, provided they consist of the same number, but more particularly of the same identical person? No man will affirm this. But it may be said that a second house or senate, being generally fewer in number, do by their separation acquire an influence which would have been lost, had the whole been incorporated in one house. I answer, perhaps it might not have been lost; it would no doubt sometimes so happen, that they, in conjunction with the minority in the other house would be able to set aside some bills, which for want of their assistance there, have passed, this would have been a shorter, and easier way; and attended besides, with much less expence of time and money; and excepting in some such instances, all such influence ought to be lost; for in no instance ought the minority to govern the majority. Again, it is more simple: and it is a well known maxim that the simpler a machine is, it is the more perfect; the reason on which it is grounded is obvious: viz. because it is the less liable to disorder, the disorder more easily discovered, and when discovered, more easily repaired and in no instance is this maxim more applicable than in the great machine of government.[4] But say they there ought to be two houses because there are two separate interests. I answer by denying that any community can possibly have any but one common public interest, that is, the greatest good of the whole and of every individual as a part of that whole: but if it be private interest that is meant, I confess that there are not only two, but twenty and it may be more private interests in every government, and the same argument would prove that there ought to be twenty or indeed five hundred houses of legislature in each government: and by proving too much falls to the ground. But the grand argument of all, is that by being separate they have a power of checking some bills which would otherwise pass into laws and might be detrimental to society. Had not this argument been produced on the other side, I should certainly have produced it in favour of one house: however I

ask is a minority in one house, properly entitled to over rule a majority in the other? Are they not as likely to check a good bill as a bad one? and has it not[5] in fact often happened? Is it not as probable that the second house lay some[?] of their checks on a good bill which perhaps they had little considered as that the first, should pass a bad one, where it had originated and perhaps[?] thoroughly considered? But let us turn the argument over and take a view of the other side of it. The inconsistencies that attend the idea of two houses are innumerable. Take one, supposing them both our representatives (tho it will be hard to prove them so) it makes their constituents to say in many instances by their representatives in one house, 'this shall be a law,' by their representatives in the other with respect to the same bill; 'This shall not be a law.' It impowers one body of men to enact statutes; and another to forbid their being carried into execution. It resembles a man putting forth his right hand to do some important business and then stretching forth his left hand to prevent it; but supposing them not our representatives at all, they have no business there, and all their mighty power of checking, is a mere farce.

I am now come down to that period, which I proposed at my setting out; 5.13.8
and ought not, it may be trouble the public any farther; however as I consider myself a free agent, and would have every other man not only to believe so of himself but also to use every means to be and continue really so for ever; I intend in some future paper (if I continue in the same humour I am now in) to make some transient observations, on the constitution held out to the united states, by the continental convention, which I sincerely wish might in the mean time be done by some better hand.

In the above hints, I have spoken my sentiments but their authority comes 5.13.9
from their being the sentiments of a Locke[,] a Sidney and of all the great and good names who have favoured the world with observations on this important subject: but what gives them the highest possible dignity with me; I believe them to be the sentiments of reason itself: and while I remain under the conviction should a government arise, flowing from any other source and running in another channel; though I shall always submit to the laws of my country, with as much cheerfulness as I can; yet the voice of the united world shall never persuade me to say it is right.

Republicus

1 March 1788

True Liberty
. . . Always with right reason dwells
Twinn'd, and from her hath no dividual being.
MILTON[6]

5.13.10 There is but one source of political happiness, viz. liberty; our liberty is founded on our reason, which is the gift of heaven: this proves its excellence; but many sources of unhappinness, and slavery: every one of which, owes its existence to the abuse of some passion or appetite of mankind. Ambitious persons, already raised to a pitch of eminence disgraceful to human nature; not contented with the vassalage of thousands, who have given themselves up to the vilest subjection, even to be bought or sold like asses or swine; too often, merely to gratify a wanton lust of domination, employ those very wretches, in the infernal business of subjecting others, before happy and free; this constitutes external slavery; of such an attempt we have had a recent trial; but there is another sort of slavery which from the modesty of its appearance, and gentleness of its approaches, is not so alarming, and therefore the more dangerous; of which we ought continually to beware: viz. internal, that is, when a people already free, implicitly intrust, or permit, any set of men to form constitutions of government or enact laws for them; without inquiring, whether such constitutions, have for their basis, the true principles of liberty, and equal right. Of those principles I have, in a former paper, attempted a very succinct investigation: I shall in this, examine some parts of the federal constitution, (now held out to these states) according to those principles, and leave the public, impartially to judge for themselves.

5.13.11 And here, I am happy in finding myself anticipated, and the work partly done to my hand, by the publication of a letter from a gentleman, whose official situation sets his sentiments in a very conspicuous point of view; and whose well known abilities and integrity make every observation of his, merit the highest degree of attention;[7] I shall therefore pass over those things which he has already done in so masterly a manner, and confine myself to a few points, which he has either slightly touched upon or has been wholy silent.

5.13.12 Article I. Section I. "All legislative power herein granted, shall be vested in a Congress of the united states; which shall consist of a senate and house of representatives.["]

The absurdity of two houses of legislature, has formerly been touched upon on the supposition of their being both our representatives; but that observation becomes here unnecessary: this appears without a mask: they (the senate) are not even the supposed representatives of any body; but distinguished from them, in as express terms as english words can do it; how then is this a Congress [that is a meeting][8] of the united States; when such meeting, does neither consist of the whole people of these states, nor wholly of the representatives of those people?[9] but not to dispute about words let us consider the election, the proportional numbers, and the powers of this senatorial body. And first, they are to be chosen by the legislative bodies of the several states respectively: what numeral proportion these legislative bodies may bear to their constituents, or the people at large, is to me

uncertain; but I will suppose it as one to two hundred; it is plain, that if they represent any body at all, it can be only those who have elected them, viz. one two-hundredth part of the people: bodies, having been chosen only for legislative purposes, and election, and legislation, being powers wholly different, and indeed too important to be both committed to the same set of men, at the same time; that choice can invest them with no right to delegate representatives for any body but themselves; but I confess this argument is superfluous, this constitution having in so many words, separated the very idea or character of a senator from that of a representative. Again, as to their numbers, there are to be two senators from each state; is not this visibly subversive of the great original right to equality? does it not tend to obliterate the very idea? To demonstrate this, requires only that we compare the representation of the state of Rhode-Island and Providence plantations, with that of Virginia; the former from their numbers, are intitled to have only one representative in Congress; the latter, on the same principle, and for the same reason, are to have ten. If Virginia, from her numbers, has a right to ten times the influence of Rhode-Island in the lower house of Congress, why not in the senate? I see no reasonable answer to this, but that the lower house consists of the representatives of the people, consequently are a regular, well proportioned body, the senate an unmeaning and arbitrary [ ] of the different legislatures; and of consequence a body irregular, deformed, and disproportionate.

But again, if we consider this power, it contains a very considerable and 5.13.13
essential share of the elective, legislative, executive, and judiciary department, and in all these, they are independent of the people, not in any instance responsible to them: from whence can their right to such power arise? It was never delegated to them from the people, who alone were justly possessed of it; no exterior power had authority to confer it; it appears therefore a mere non entity; or rather a complicated usurpation of power without right: and therefore to be rejected: and yet, extraordinary as it may seem, this senatorial dignity, is to continue in the same hands *six years,* and even at the end of that term, they are again eligible, and so on a third, a fourth, a seventh time, to perpetuity. But I long to have them off my hands, as I would any other useless or dangerous commodity, and can only consider their institution, as a servile and ill-judg'd imitation of the house of lords in the British parliament, where (though there appears now and then a virtuous character) dissipation, venality, and corruption, are alternately, and incessantly breeding growing, and triumphing; have often distracted the kingdom, and in some degree, inslaved the nation. I go now to Art. 2, Sec. 1 which vest the supreme continental executive power in a president: in order to the choice of whom, the legislative body of each state, is empowered to point out to their constituents, some mode of choice, or (to save trouble) may choose themselves, a certain number of electors, who shall meet in their respective states, and vote by ballot, for two persons, one of whom, at

least shall not be an inhabitant of the same state with themselves. Or in other words, they shall vote for two, one or both of whom they know nothing of. An extraordinary refinement this, on the plain simple business of election; and of which the grand convention have certainly the honour of being the first inventors; and that for an officer too, of so much importance as a president; invested with legislative and executive powers—who is to be commander in chief of the army[,] navy, militia, etc. grant reprieves and pardons, have a temporary negative on all bills and resolves, convene and adjourn both houses of congress, be supreme conservator of laws, commission all officers, make treaties, etc. etc. and who is to continue[10] four years, and is only removable on conviction of treason[?] or bribery and trial be only by the senate, who are to be his own council whose interest in every instance runs parallel with his own; and who are neither the officers of the people, nor accountable to them. Is it then become necessary, that a free people, should first resign their right of suffrage into other hands besides their own, and then, secondly, that they to whom they resign it, should be compelled to choose men, whose persons, characters, manners, or principles they know nothing of; and after all, (excepting some such change as is not likely to happen twice in the same century) to intrust Congress with the final decision at last? Is it necessary, is it rational that the sacred rights of mankind should thus dwindle down to Electors, of electors, and those again electors of other electors; this seems to be degrading them, even below the prophetical curse denounced by the good old patriarch, on the offspring of his degenerate son; ["]servant of servants."[11]

5.13.14 Art. I. Sect. 4. "The times, places and manner of holding elections for senators, and representatives, shall be prescribed in each State, by the legislature thereof; but the Congress may, at any time by law, make or alter such regulations, except as to the place of chusing senators.["][12] Whether this clause gives Congress a power to call the people of Georgia to chuse their representatives in the city of Boston, and on the twentieth of December, and so of every other State, I leave to be determined by better judges of language than myself; however, I believe I shall not be amiss in asserting, that it invests them with power to appoint the time of choosing senators, at the greatest possible distance from the usual, and perhaps constitutionally appointed time of meeting for the purpose of legislation: This latter in large States, or newly settled countries amounts to little less than a peremptory exclusion of all members of legislatures, in extensive districts; who from their situation, are less liable to corruption: the former, if true, would put it into the power of a few, a very few! to appoint representatives for the whole continent: and both together, tend to perpetuate the authority, not only of the same men, but also of their *heirs for ever*. Again, I would ask (considering how prone mankind are to engross power, and then to abuse it) is it not probable, at least possible, that the president who is to be vested with all this demi-omnipotence, who is not chosen by the community, and who

consequently as to them, is irresponsible, and independent; that he, I say, by a few, artful and dependent emissaries in congress, may not only perpetuate his own personal administration, but also make it hereditary: that by the same means, he may render his suspensive power over the law, as operative, and permanent, as that of G. the 3d over the acts of the British parliament: and under the modest title of president, may exercise the combined authority of legislation, and execution, in a latitude yet unthought of: or, that upon his being invested with those powers a second, or third time, he may acquire such enormous influence, as, added to his uncountroulable power over the army, navy, and militia; together with his private interest in the officers, of all these different departments, who are all to be appointed by himself, and so his creatures, in the true political sense of the word; and more especially when added to all this, he has the power of forming treaties and alliances, and calling them to his assistance; that he may, I say, under all these advantages, and almost irresistable temptations, on some pretended pique, haughtily, and contemptously, turn our poor lower house, (the only shadow of liberty we shall have left) out of doors, and give us law at the bayonets point; or may not the senate, who are nearly in the same situation, with respect to the people from similar motives, and by similar means, erect themselves easily into an oligarchy, towards which they have already attempted so large a stride; to one of which channels, or rather to a confluence of both, we seem to be fast gliding away; and the moment we arrive at it—farewell liberty. This leads me to Art. I Sect. 9. "The migration or importation of such persons, as any of the States now existing, shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808; (twenty years hence) but a tax, or duty may be imposed on much importation, not exceeding ten dollars for each person.["] An excellent clause this, in an Algerian constitution: but not so well calculated (I hope) for the latitude of America.[13] It is not to be disguised that by "such persons," slaves are principally, if not wholly intended: and shall this be found among the principles of a free people, and making a radical part of the grand base, on which they would erect an edifice sacred to liberty. "Tell it not in Gath!"[14] O that no envious surge might ever roll it to the eastern side of the Atlantic! Unhappy africans! What have they done? Have they murdered our citizens or burnt our settlements? Have they butchered, scalped, and exhausted every device of torture, on our defenceless women, and innocent children; as the savage meserians[?] of our own country have done? No, no! Then, why deprive them of the greatest of all blessings, liberty, "without which," says Dr. Price man is a beast, and life a curse,[15] while coward-like, we court, caress, and cringe to our murderers. Ignorant, and comparatively innocent, till we taught them the diabolical arts of destruction, captivity, and death; and provided them with the infernal means of carrying them into practice: and all this to furnish ourselves with slaves, at the guilty expence oftimes, of the blood of, ten times the number of those thus enslaved, who

lost their lives in the gallant the virtuous defence of themselves, and families. Has this guilt ever been attoned? and do we boast of being advocates for liberty? shocking absurdity! More absurd still that a license for such an execrable trade, should be radically woven into, and become an essential part of our national constitution[,] a constitution, formed by a chosen assembly of our most eminent and respectable citizens: and where a personage presided, second to no individual of the human family.

The boast of America.—The wonder of Europe
O liberty! O virtue! O my country.

Tell us, ye who can that, cooly, reduce the impious principle of slavery, to a constitutional system: ye professed violators of liberties of mankind: where will ye stop? what security can you give, that, when there shall remain no more black people, ye will not enslave others, white as yourselves? when Africa is exhausted, will ye spare America? and is not twenty years (taking into the account the slain with the more unhappy captives, victims to perpetual slavery) sufficient to depopulate her inmost forest? Or is this only an ill boding prelude, sounded in the ears, and designedly introductory to the fate of these (yet unhappy) states, who gave you existence; and who even now, while you are thus ungratefully soaring toward the summit of *Aristocracy,* are honouring you with their confidence? I shudder at the catastrophe? awake my fellow citizens! and let this infamous clause, together with the principle which gave it birth, be not only expunged out of your constitution: but countermanded, eradicated, torn from your heart forever.

5.13.15 To conclude, I can think of but one source of right to government, or any branch of it; and that is *the people*. They, and only they, have a right to determine whether they will make laws, or execute them, or do both in a collective body, or by a delegated authority. Delegation is a positive actual investiture. Therefore if any people are subjected to an authority which they have not thus actually chosen; even though they may have tamely submitted to it, yet it is not their legitimate government: they are wholly passive, and as far as they are so, are in a state of slavery. Thank heaven we are not yet arrived at that state; and while we continue to have sense enough to discover and detect, and virtue enough to detest and oppose every attempt, either of *force* or *fraud*, either from *without* or *within*, to bring us into it, we never will.

5.13.16 Let us therefore continue united in the cause of rational liberty. Let unity and liberty be our mark as well as our motto: for only such an union can secure our freedom; and division will inevitably destroy it. Thus a mountain of sand may peace meal be removed by the feeble hands of a child: but if consolidated to a rock, it mocks the united efforts of mankind, and can only fall in a general wreck of nature.

Republicus

1. William Cowper, *The Task* III, "The Garden," lines 201–5.
2. For references to other Anti-Federalist discussions of representation see Federal Farmer II, 2.8.15 n. 11.
3. For Federalist defenses of bicameralism see McMaster and Stone 97–99 (Pelatiah Webster), 168 (A Federalist); Ford, *Pamphlets* 30 ff. (A Citizen of America).
4. On simple responsible government see Centinel 1, 2.7.1–27 and n. 1.
5. I have not followed the original printer, who shifted at this point to italic type.
6. *Paradise Lost* XII, lines 83–85.
7. Probably the letter of Richard Henry Lee, above 5.6.
8. Brackets in original.
9. See the references collected in Federal Farmer III, 2.8.28 n. 22.
10. Again I have not followed the printer in his shift at this point to italic type.
11. Genesis 9:25. Generally the mode for electing the President was not much criticized by the Anti-Federalists. See Federal Farmer III, 2.8.29 n. 23.
12. On this clause see references in Vox Populi 4.4.3 n. 1.
13. On the slave trade clause see Martin 2.4.65 n. 24.
14. 2 Samuel 1:20.
15. See Richard Price, *Observations on the Nature of Civil Liberty* I, sec. 1, "Of the Nature of Liberty in General."

Essays by The Impartial Examiner

VIRGINIA INDEPENDENT CHRONICLE
February–June 1788

The five essays of the Impartial Examiner appeared in the *Virginia Independent Chronicle,* the first during February and March of 1788, and the remainder in successive weeks in May and June. They constitute another important and interesting Anti-Federal statement reprinted here for the first time. The Impartial Examiner begins the first, long essay with a good statement of the dangers of ill-considered innovation (5.14.1). He makes and elaborates a distinction between arbitrary and free governments, on which the whole argument rests: "in [arbitrary governments] the governors are invested with powers of acting according to their own wills, without any other limits than what they themselves may understand to be necessary for the general good; whereas in [free goverments] they are intrusted with no such unlimited authority, but are restrained in their operations to conform to certain fundamental principles, the preservation whereof is expressly stipulated for in the *civil compact:* and whatever is not so stipulated for is virtually and impliedly given up" (5.14.2). Judged by this criterion, the author finds the proposed Constitution arbitrary: it provides for unlimited supremacy of the federal government, despite the absence among the different parts of the United States of that union of interest that must be the basis of union of counsels (5.14.4, 5, 10). There is no declaration of rights, without which civil liberty cannot exist, there being no standard to appeal to in cases of governmental oppression (5.14.5, 10). The Constitution grants dangerous and unlimited powers in the areas of taxation (5.14.6–7), standing armies (5.14.8), and the judiciary (5.14.9). While respecting the intentions of the framers, the author insists that the people must exercise an independent judgment (5.14.10–12). He contends that a more moderate revision is feasible, and (in a balanced and penetrating statement) he emphasizes the nobility of true confederation (5.14.13). The Impartial Examiner concludes the first essay with a good statement of the dangers of loose and extensive powers that goes well beyond the usual Anti-Federal cautions. The problem is to perpetuate the free republic as "the ardent glow of freedom" evaporates—as the leaders grow restless for exercise of ambition, as the

advantages of the new government "grow stale with use," and as the people grow fat with prosperity. To avoid these dangers the principles of the political order must be firmly fixed in the Constitution (5.14.14–16).

In the remaining essays, the Impartial Examiner mainly elaborates the themes already laid down. He argues in the second essay that arbitrary government is inherently despotic (5.14.17–22). The first question to be raised is whether the system proposed is "coincident with [American] standing maxims of liberty" and the second whether it is "conducive to good policy" (5.14.24). Having shown in the first essay that the system fails with respect to the former, Impartial Examiner argues that no examination of the latter is strictly necessary; but he follows the many writers who proceed to the question of policy, concluding this essay with an argument that the so-called Anti-Federalists are the true Federalists (5.14.25–26).

In essay III the Impartial Examiner takes up the question of representation, contending (in one of the good Anti-Federalist discussions of this matter) that representation must be both ample and complete and that the representation in the House of Representatives is not sufficiently numerous to be either (5.14.28–32). The Senate is elected not by the people but by the state legislatures and is open to even stronger objections (5.14.33–34).

The executive proposed by the new Constitution, discussed in essay IV, ought not to have a negative on legislation, this power being an imitation of the British system, whose circumstances are very different. The executive veto will destroy rather than maintain the balance in the American republican system (5.14.35–40).

In conclusion (essay V) the Impartial Examiner argues that the evils experienced under the Articles of Confederation spring not from vicious principles pervading the whole system (which would admittedly require radical change) but from certain weaknesses in some of the parts. The weaknesses may therefore be remedied by strengthening these parts, in particular by investing Congress with sufficient power to regulate commerce and to procure the necessary revenue for the common defense or general welfare.

I

20 February 1788

To the free people of Virginia.

Countrymen and Fellow-Citizens,

That the subject, which has given rise to the following observations, is of the highest consequence to this country, requires not the aid of logical proof; that it merits the most serious attention of every member of this 5.14.1

community, is a fact not to be controverted. Will not a bare mention of the new Fœderal Constitution justify this remark? To foreigners or such, whose local connections form no permanent interest in America, this may be totally indifferent; and to them it may afford mere matter of speculation and private amusement. When such advert to the high and distinguished characters, who have drawn up, and proposed a set of articles to the people of an extensive continent as a form of their future government, an emotion of curiosity may induce them to examine the contents of those articles: and they may, perhaps, from having contemplated on a former situation of those people—that they had struggled against a potent enemy—that they had by their virtuous and patriotic exertions rescued themselves from impending danger—that they had used the like endeavors to establish for themselves a system of government upon free and liberal principles—that they had in pursuance of those endeavors chosen a system, as conducive to the great ends of human happiness, the preservation of their *natural rights* and *liberties*—that this system has prevailed but a few years; and now already a change, a fundamental change therein is meditated:—strangers, I say, having contemplated on these circumstances, may be led to consider this nation, as a restless and dissatisfied people, whose fickle inconsistent minds suffer them not to abide long in the same situation; who perpetually seeking after new things throw away one blessing in pursuit of another: and while they are thus indulging their caprice—lose all, ere any can ripen into maturity. If the unconcerned part of those among us entertain themselves in this manner, can any good American be content to deserve such reflections? Will not all rather feel an honest indignation, if they once perceive their country stamped with a character like this? And yet, may we not justify such conceptions, if we thus precipitate ourselves into a new government before we have sufficiently tried the virtues of the old?[1] So incident is error to the human mind, that it is not to be wondered at indeed, if our present Constitution is incomplete. The best regulated governments have their defects, and might perhaps admit of improvement: but the great difficulty consists in clearly discovering the most exceptionable parts and judiciously applying the amendments. A wise nation will, therefore, attempt innovations of this kind with much circumspection. They will view the political fabric, which they have once reared, as the sacred *palladium* of their happiness;—they will touch it, as a man of tender sensibility toucheth the apple of his own eye,—they will touch it with a light, with a trembling—with a cautious hand,—lest they injure the whole structure in endeavoring to reform any of its parts. In small and trivial points alterations may be attempted with less danger; but—where the very nature, the essence of the thing is to be changed: when the foundation itself is to be transformed, and the whole plan entirely new modelled;—should you not hesitate, O Americans? Should you not pause—and reflect a while on the the important step, you are about to take? Does it not behove you to examine well into the

nature and tendency of the Constitution now proposed for your adoption? And by comparing it with your present mode of government, endeavor to distinguish which of the two is most eligible? Whether *this* or *that* is best calculated for promoting your happiness? for obtaining and securing those benefits, which are the great object of civil society? Will it be consistent with the duty, which you owe to yourselves, as a nation, or with the affection, which you ought to bear for your posterity, if you rashly or inconsiderately adopt a measure, which is to influence the fate of this country for ages yet to come? How will it accord with your dignity and reputation, as an independent people, if either through an over-weaning fondness for novelty you are suddenly transported on the wings of imagination, and too hastily make up your thoughts on this great subject; or by sinking into a listless inactivity of mind, view it as an indifferent matter unworthy of any deliberate consideration? Will any respect? Will any honor? Will any veneration be due to the memory of yourselves, as ancestors, if millions of beings, who have not yet received their birth, when you are all mouldered into dust, should find themselves fixed in a miserable condition by one injudicious determination of your's at this period? If you see no impropriety in these questions, the suggestions contained in them will not appear altogether unworthy of attention. One moment's reflection, it is humbly presumed, will render it obvious that on this occasion they are not impertinently propounded.

In pursuing this address I beg leave to premise that the only true point of 5.14.2
distinction between arbitrary and free governments seems to be, that in the former the governors are invested with powers of acting according to their own wills, without any other limits than[2] what they themselves may understand to be necessary for the general good; whereas in the latter they are intrusted with no such unlimited authority, but are restrained in their operations to conform to certain fundamental principles, the preservation whereof is expressly stipulated for in the *civil compact:* and whatever is not so stipulated for is virtually and impliedly given up. Societies so constituted invest their supreme governors with ample powers of exerting themselves according to their own judgment in every thing not inconsistent with or derogatory to those principles; and so long as they adhere to such restrictions, their deeds ought not to be rescinded or controuled by any other power whatsoever. Those principles are certain inherent rights pertaining to all mankind in a state of natural liberty, which through the weakness, imperfection, and depravity of human nature cannot be secured in that state. Men, therefore, agree to enter into society, that by the united force of *many* the rights of *each* individual may be protected and secured. These are in all just governments laid down as a foundation to the *civil compact,* which contains a *covenant* between *each* with *all,* that they shall enter into one society to be governed by the same powers; establishes for that purpose the *frame* of government; and consequently creates a *Convention* between

every member, binding those, who shall at any time be intrusted with power, to a faithful administration of their trust according to the form of the *civil policy*, which they have so constituted, and obliging all to a due obedience therein. There can be no other just origin of civil power, but some such mutual contract of all the people: and although their great object in forming society is an intention to secure their natural rights; yet the relations arising from this *political union* create certain duties and obligations to the state, which require a sacrifice of some portion of those rights and of that exuberance of liberty, which obtains in a state of nature.—This, however, being compensated by certain other adventitious rights and privileges, which are acquired by the social connection; it follows that the advantages derived from a government are to be estimated by the *strength* of the *security*, which is attended at once with the *least sacrifice* and the *greatest acquired benefits*. That government, therefore, which is best adapted for promoting these three *great ends*, must certainly be the best constituted scheme of *civil policy*. Here, then, it may not be improper to remark that persons forming a social community cannot take too much precaution when they are about to establish the plan of their government. They ought to construct it in such a manner as to procure the best possible security for their rights;—in doing this they ought to give up no greater share than what is understood to be absolutely necessary:—and they should endeavor so to organize, arrange and connect it's several branches, that when duly exercised it may tend to promote the *common good* of all, and contribute as many advantages, as the civil institution is capable of. It has been before observed that the only just origin of civil power is a contract entered into by all the people for that purpose.—If this position be true (and, I dare presume, it is not controverted, at least in this country) right reason will always suggest the expediency of adhering to the essential requisites in forming that contract upon true principles. A cautious people will consider all the inducements to enter into the *social state*, from the most important object down to the minutest prospect of advantage. Every motive with them will have its due weight. They will not pay a curious attention to trifles and overlook matters of great consequence:—and in pursuing these steps they will provide for the attainment of *each* point in view with a care—with an earnestness proportionate to its dignity, and according as it involves a *greater* or a *lesser* interest. It is evident, therefore that they should attend most diligently to those sacred rights, which they have received with their birth, and which can neither be retained to themselves, nor transmitted to their posterity, unless they are *expressly reserved:* for it is a maxim, I dare say, universally acknowledged, that when men establish a system of government, in granting the powers therein they are always understood to surrender whatever they do not so expressly reserve.[3] This is obvious from the very design of the civil institution, which is adopted in lieu of the state of natural liberty, wherein each individual, being equally intitled to the enjoyment of all natural rights, and

having equally a just authority to exercise full powers of acting, with relation to other individuals, in any manner not injurious to their rights, must, when he enters into society, be presumed to give up all those powers into the hands of the state by submitting his whole conduct to the direction thereof. This being done by every member, it follows, as a regular conclusion, that all such powers, whereof the whole were possessed, so far as they related to each other individually, are of course given up by the mere act of union. If this surrender be made without any reservation, the conclusion is equally plain and regular, that *each* and *all* have given up not only those powers, which relate to others, but likewise every claim, which pertained to themselves, as individuals. For the universality of the grant in this case must necessarily include every *power* of acting, and every *claim* of possessing or obtaining any thing—except according to the regulations of the state. Now a right being properly defined, "a power or claim established by law, to act, or to possess, or to obtain something from others,"[4] every natural right is such *power* or *claim* established by the law of nature. Thus, it is manifest, that in a society constituted after this manner, every right whatsoever will be under the power and controul of the civil jurisdiction. This is the leading characteristic of an arbitrary government, and whenever any people establish a system like this, they subject themselves to one, which has not a single property of a free constitution. Hence results the necessity of an *express stipulation* for all such rights as are intended to be exempted from the civil authority.

Permit me now, my country men, to make a few observations on the proposed Fœderal Constitution. In this attempt the subject, as it is arduous and difficult, naturally impresses the modest mind with diffidence: yet being of the last importance, as involving in it the highest interest, that freemen can have—all that is dear and valuable to the citizens of these United States; a consciousness of the strong claim, which this subject has, to a free and general discussion, has prevailed over that discouraging idea so far as to produce the present address to you. This is done with a reliance on that benevolence and liberality of sentiment, with which you have hitherto been actuated. From these benign qualities, it is hoped, the most favorable indulgence will be granted, and that the zeal, with which this is written, will be allowed in some measure an excuse for its defects. However imperfect, therefore this may be, however inadequate to your own ideas, or to the wishes of him, who offers it to your consideration; you are hereby intreated to let the perusal, with which you may think proper to favor it, be serious, candid, dispassionate—as it relates to a common cause, in which all are alike concerned. 5.14.3

Suffer me, then, in the first place to advert to a part of the sixth article in this constitution. It may, perhaps, appear somewhat irregular, to begin with this article, since it is almost the last proposed: yet, if it be considered that this at once defines the extent of Congressional authority, and indisputably 5.14.4

fixes its supremacy, every idea of impropriety on this head will probably vanish. The clause alluded to contains the following words, "This constitution, and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; any thing in the constitution or laws of any state to the contrary, notwithstanding." If this constitution should be adopted, here the sovereignty of America is ascertained and fixed in the fœderal body at the same time that it abolishes the present independent sovereignty of each state. Because this government being general, and not confined to any particular part of the continent; but pervading every state and establishing its authority equally in all, its superiority will consequently be recognized in each; and all other powers can operate only in a secondary subordinate degree. For the idea of two sovereignties existing within the same community is a perfect solecism. If they be supposed equal, their operation must be commensurate, and like two mechanical powers of equal *momenta* counteracting each other;—there the force of the one will be destroyed by the force of the other: and so there will be no efficiency in either. If one be greater than the other, they will be similar to two unequal bodies in motion with a given degree of velocity, and impinging each other from opposite points;—the motion of the lesser in this case will necessarily be destroyed by that of the greater: and so there will be efficiency only in the greater. But what need is there for a mathematical deduction to shew the impropriety of two such distinct co-existing sovereignties? The natural understanding of all mankind perceives the apparent absurdity arising from such a supposition: since, if the word means any thing at all, it must mean that *supreme power,* which must reside somewhere instate; or. in other terms, it is the united powers of each individual member of the state collected and consolidated into *one body*. This collection, this union, this supremacy of power can, therefore, exist only in one body. This is obvious to every man: and it has been very properly suggested that under the proposed constitution each state will dwindle into "the insignificance of a town corporate."[5] This certainly will be their utmost consequence; and, as such, they will have no authority to make laws, even for their own private government any farther than the permissive indulgence of Congress may grant them leave. This, Virginians, will be your mighty, your enviable situation after all your struggles for independence! and, if you will take the trouble to examine, you will find that the great, the supereminent authority, with which this instrument of union proposes to invest the fœderal body, is to be created without a single check—without a single article of covenant for the preservation of those inestimable rights, which have in all ages been the glory of freemen. It is true, "the United States shall guarantee to every state in this union a republican form of government": yet they do not guarantee to the different states their present forms of government, or the bill of rights

thereto annexed, or any of them; and the expressions are too vague, too indefinite to create such a compact by implication. It is possible that a "republican form" of government may be built upon as absolute principles of despotism as any oriental monarchy ever yet possessed. I presume that the liberty of a nation depends, not on planning the frame of government, which consists merely in fixing and delineating the powers thereof; but on prescribing due limits to those powers, and establishing them upon just principles.

It has been held in a northern state by a zealous advocate for this constitution that there is no necessity for "a bill of rights" in the fœderal government; although at the same time he acknowledges such necessity to have existed when the constitutions of the separate governments were established.[6] He confesses that in these instances the people "invested their representatives with every power and authority, which they did not in explicit terms reserve": but "in delegating fœderal powers," says he, "every thing, which is not given, is reserved." Here is a distinction, I humbly conceive, without a difference, at least in the present enquiry. How far such a discrimination might prevail with respect to the present system of union, it is immaterial to examine: and had the observation been restrained to that alone, perhaps it might be acknowledged to contain some degree of propriety. For under the confederation it is well known that the authority of Congress cannot extend so far as to interfere with, or exercise any kind of coercion on, the powers of legislation in the different states; but the internal police of each is left free, sovereign and independent: so that the liberties of the people being secured as well as the nature of their constitution will admit; and the declaration of rights, which they have laid down as the *basis* of government, having their full force and energy, any farther stipulation on that head might be unnecessary. But, surely, when this doctrine comes to be applied to the *proposed* fœderal constitution, which is framed with such large and extensive powers, as to transfer the individual sovereignty from each state to the *aggregate body*,—a constitution, which delegates to Congress an authority to interfere with, and restrain the legislatures of every state—invests them with supreme powers of legislation throughout all the states—annihilates the separate independency of each; and, in short—swallows up and involves in the plenitude of its jurisdiction all other powers whatsoever:—I shall not be taxed with arrogance in declaring such an argument to be fallacious; and insisting on the necessity of a positive unequivocal declaration in favor of the rights of freemen in this case even more strongly than in the case of their separate governments. For it seems to me that when any civil establishment is formed, the more general its influence, the more extensive the powers, with which it is invested, the greater reason there is to take the necessary precaution for securing a due administration, and guarding against unwarrantable abuses.

5.14.5

(To be continued.)

27 February 1788

(*Continued from our last*)

5.14.6 Section 8th of the first article gives the Congress a power "to lay and collect, taxes, duties, imposts and excises." If it be a true maxim that those, who are entrusted with the exercise of the higher powers of government, ought to observe two essential rules: first in having no other view than the general good of all without any regard to private interest; and secondly, to take equal care of the whole body of the community, so as not to favor one part more than another: it is apparent that under the proposed constitution, this general confederated society, made up of thirteen different states, will have very little security for obtaining an observance, either of the one, or of the other, rule. For being different societies, though blended together in legislation, and having as different interests; no uniform rule for the whole seems to be practicable; and hence, it is to be feared, that the general good may be lost in a mutual attention to private views. From the same causes we may lament the probability of losing the advantage of the second rule; for it may be expected, in like manner, that the general care of the whole will be lost by the separate endeavors of different legislators to favor their own states. So long as mankind continues to be influenced by interest, the surest means of effecting an union of counsels in any assembly is by an union of interests.[7] Now, if it be considered that it is this concert, that it is this union in promoting the *general good,* which alone can preserve concord in this great republic, and secure it success and glory,—unhappy will be the situation of America, if she once precludes the beneficial effects of such a good understanding. Yet, I apprehend that these evils may result in a great measure from an exercise of that branch of legislative authority, which respects internal direct taxation. For in this, it is scarcely probable that the interest, ease or convenience of the several states can be so well consulted in the fœderal assembly, as in their own respective legislatures. So different are many species of property, so various the productions, so unequal the profits arising, even from the same species of property, in different states, that no general mode of contribution can well be adopted in such a manner as at once to affect all in an equitable degree. Hence may arise disagreeable objects of contention. A diversity of interests will produce a diversity of schemes. Thus each state, as it is natural, will endeavor to raise a revenue by such means, as may appear least injurious to its own interest: a source of dissention manifestly detrimental to that harmony, which is necessary to support the confederation. I cannot conceive it impracticable to reform the fœderal system in such a manner as to ensure a compliance with the necessary requisitions of Congress from the different state legislatures. Then all the several states being left to raise their own share of the revenue, and being the only proper judges of the mode most convenient to themselves, it is highly probable that this important branch of government would be car-

ried on more generally to the satisfaction of each state; and would tend to promote a spirit of concord between all the parts of this great community. Because *each* being thus accomodated, and participating the advantages of the union,—*none* subjected to any inconvenience thereby,—*all* would consequently concur in nourishing an affection for the government, which so cemented them.

I believe, it is acknowledged that the establishment of excises has been 5.14.7
one of the greatest grievances, under which the English nation has labored for almost a century and an half. Although this may seem an œconomical tax, as arising out of manufactures, from which the *industrious* may derive advantages; and whereof the *wealthy* by consuming the greatest share, will of course contribute the largest proportion of the tax: yet the nature of it being such, as requires severe laws for its execution, it has justly become an object of general detestation. This has induced Judge Blackstone to declare that "the rigour and arbitrary proceedings of excise laws seem hardly compatible with the temper of a free nation."[8] While, therefore, you are freemen—while you are unused to feel any other power, but such as can be exercised within the bounds of moderation and decency, it, doubtless, behoves you to consider whether it is an eligible step to subject yourselves to a new species of authority, which may warrant the most flagrant violations of the sacred rights of habitation. If this branch of revenue takes place, all the consequent rigour of excise laws will necessarily be introduced in order to enforce a due collection. On any charges or offence in this instance you will see yourselves deprived of your boasted trial by jury. The much admired common law process will give way to some quick and summary mode, by which the unhappy defendant will find himself reduced, perhaps to ruin, in less time than a charge could be exhibited against him in the usual course.

It has ever been held that standing armies in times of peace are dangerous 5.14.8
to a free country; and no observation seems to contain more reason in it. Besides being useless, as having no object of employment, they are inconvenient and expensive. The soldiery, who are generally composed of the dregs of the people, when disbanded, or unfit for military service, being equally unfit for any other employment, become extremely burthensome. As they are a body of men exempt from the common occupations of social life, having an interest different from the rest of the community, they wanton in the lap of ease and indolence, without feeling the duties, which arise from the political connection, though drawing their subsistence from the bosom of the state. The severity of discipline necessary to be observed reduces them to a degree of slavery; the unconditional submission to the commands of their superiors, to which they are bound, renders them the fit instruments of tyranny and oppression.—Hence they have in all ages afforded striking examples of contributing, more or less, to enslave mankind;—and whoever will take the trouble to examine, will find that by far the greater part of the different nations, who have fallen from the glori-

ous state of liberty, owe their ruin to standing armies. It has been urged that they are necessary to provide against sudden attacks.[9] Would not a well regulated militia, duly trained to discipline, afford ample security? Such, I conceive, to be the best, the surest means of protection, which a free people can have when not actually engaged in war. This kind of defence is attended with two advantages superior to any others; first, when it is necessary to embody an army, they at once form a band of soldiers, whose interests are uniformly the same with those of the whole community, and in whose safety they see involved every thing that is dear to themselves: secondly, if one army is cut off, another may be immediately raised already trained for military service. By a policy, somewhat similar to this, the Roman empire rose to the highest pitch of grandeur and magnificence.

5.14.9 The supreme court is another branch of fœderal authority, which wears the aspect of imperial jurisdiction, clad in a dread array, and spreading its wide domain into all parts of the continent. This is to be co-extensive with the legislature, and, like that, is to swallow up all other courts of judicature.—For what is that judicial power which "shall extend to all cases in law and equity" in some having "original," in all others "appellate jurisdiction," but an establishment universal in its operation? And what is that "appellate jurisdiction both as to law and fact," but an establishment, which may in effect operate as original jurisdiction?[10]—Or what is an appeal to enquire into facts after a solemn adjudication in any court below, but a trial *de novo*? And do not such trials clearly imply an incompetency in the inferior courts to exercise any kind of judicial authority with rectitude? Hence, will not this eventually annihilate their whole jurisdiction? Here is a system of jurisprudence to be erected, no less surprising than it is new and unusual. Here is an innovation, which bears no kind of analogy to any thing, that Englishmen, or Americans, the descendants of Englishmen, have ever yet experienced. Add to all, that this high prerogative court establishes no fundamental rule of proceeding, except that the trial by jury is allowed in some criminal cases. All other cases are left open—and subject "to such regulations as the Congress shall make."—Under these circumstances I beseech you all, as citizens of Virginia, to consider seriously whether you will not endanger the solemn trial by jury, which you have long revered, as a sacred barrier against injustice—which has been established by your ancestors many centuries ago, and transmitted to you, as one of the greatest bulwarks of civil liberty—which you have to this day maintained inviolate:—I beseech you, I say, as members of this commonwealth, to consider whether you will not be in danger of losing this inestimable mode of trial in all those cases, wherein the constitution does not provide for its security.[11] Nay, does not that very provision, which is made, by being confined to a few particular cases, almost imply a total exclusion of the rest? Let it, then, be a reflection deeply impressed on your minds—that if this noble privilege, which by long experience has been found the most exquisite

method of determining controversies according to the scale of equal liberty, should once be taken away, it is unknown what new species of trial may be substituted in its room. Perhaps you may be surprised with some strange piece of judicial polity,—some arbitrary method, perhaps confining all trials to the entire decision of the magistracy, and totally excluding the great body of the people from any share in the administration of public justice.

(*To be continued*)

5 March 1788

(*Concluded from our last.*)

After the most deliberate reflections on this important matter, permit me, my dear countrymen, to declare to you in the most unfeigned manner, that not perceiving any thing in the proposed plan of government, which seems calculated to ensure the happiness of America—I could not, as a fellow-citizen, resist the inclination to impart these sentiments to you. Unmoved by party—rage—unassailed by passion—uninfluenced by any other interest, but the genuine effusion of zeal for this, our common country, I confess to you in the language of sincerity and candor, that after the first reading of this new code, I could not behold it, but with an eye of disapprobation. Unwilling, however, to reject at first sight an object of such high moment, I resolved to distrust the propriety of a construction passed at so early a period.—This led me to peruse it with the utmost diligence I was capable of; and believe me, the foregoing observations have arisen from the fullest conviction that the system involves in it the most dangerous principles; and—so far from exalting the *standard* of American liberty, I fear indeed that, should it be adopted, this glorious *work*, which already has cost the lives of many worthy patriots, will ere long be leveled with the dust. Let it not be conjectured from hence that any illiberal conceptions are formed by the writer hereof respecting the intentions of those gentlemen, who have offered this plan of fœderal government.[12] He knows no circumstance inducing him to suppose they had any other object in view but the good of their country.—When we contemplate the great—the magnanimous HERO, who has conducted our armies through all the trying vicissitudes of danger and difficulty,—there is no man so disingenuous—there is no man so ungrateful, as to impute any transactions of his to sinister motives. Every true American is well assured that steadiness of virtue—that benignity of soul have the chief rule in all his actions.—Yet every American, and every other person, are satisfied also that there is no infallibility in human nature.—To be man is to be subject to error. The best, the greatest, the wisest are liable to commit mistakes.—Let it be remembered, then, that this code of gov- 5.14.10

ernment is solemnly proposed to every freeman in America. For what?—For the purpose of binding them without their approbation? No.—For an implicit acceptance? No.—For their adoption merely in compliment to the general convention? No.—What then?—Every man's duty to his country points out to him the end of this proposition. Every man knows that it is for a free, a candid, and impartial discussion and determination thereon; whether they will approve and adopt it; or whether they will disapprove and reject it. Can any citizen, therefore, be so weak? can any be so timid? so pusillanimous, as to acknowledge that he has no right to exercise his own judgement with regard to this matter? If there should be any haughty spirits among us, who think that this subject ought to be handled by none but a few persons of eminent characters, let such recollect that the dignity, the importance of their country should inspire sentiments more exalted than the highest characters—sentiments, that should correspond with the worth of America, not with the consequence of any mere individuals. Will you, then, Virginians, arrogate too much by boldly asserting the privilege to judge for yourselves in what so nearly concerns the cause of liberty? No, no, my countrymen, you will not arrogate too much; you will not: I avow it by the souls of those brave patriots, who fought for the same cause in the late war. You will in this affair act as becomes you. The rank, you hold amongst the nations of the earth, requires this of you. And you will forfeit that rank: you will forfeit the character of *freemen;* and shew that you deserve to be enslaved, if you decline that privilege. The happiness of a multitude of people is certainly the highest advantage, which can be conferred on any society: and if you will contribute a full share of duty to effect this, so shall you obtain a due share of glory. No pomp of character, no sound of names, no distinction of birth—no pre-eminence of any kind, should dispose you to hoodwink your own understandings; and in that state suffer yourselves to be led at the will of any order of men whatsoever. The part you have acted heretofore,—the brave, the noble efforts, you have made, are proof enough of your fortitude, and totally exclude every idea of pusillanimity. Herein you have evinced the highest sense of public virtue: herein you have manifested to the whole world that the cause of liberty has hitherto had the prevailing influence over your hearts. And shall men possessed of these sentiments? shall those valiant defenders of their country, who have not feared to encounter toil and danger in a thousand shapes, who have not startled, even at the prospect of death itself? Shall you, O Virginians; shall you, I say, after exhibiting such bright examples of true patriotic heroism, suddenly become inconsistent with yourselves; and were [fail?] to maintain a privilege so incontestibly your due?—No, my countrymen;—by no means can I conceive that the laudable vigor, which flamed so high in every breast, can have so far evaporated in the space of five years. I doubt not, but you will in this trying instance acquit yourselves in a manner worthy of your former conduct. It is not to be feared that you need the force of persuasion,

to exercise a proper freedom of enquiry into the merits of this proposed plan of government: or that you will not pay a due attention to the welfare of that country, for which you have already so bravely exerted yourselves. Of this I am well assured; and do not wonder when imagination presents to my view the idea of a numerous and respectable body of men reasoning on the principles of this fœderal constitution. If herein I conceive that you are alarmed at the exceedingly high and extensive authority, which it is intended to establish, I cannot but see the strongest reasons for such apprehensions. For a system, which is to supercede the present different governments of the states, by ordaining that "laws made in pursuance thereof shall be supreme, and shall bind the judges in every state, any thing in the constitution or laws of any state to the contrary notwithstanding," must be alarming indeed! What cannot this omnipotence of power effect? How will your bill of rights avail you any thing? By this authority the Congress can make laws, which shall bind all, repugnant to your present constitution—repugnant to every article of your rights; for they are a part of your constitution,—they are the basis of it. So that if you pass this new constitution, you will have a naked plan of government unlimited in its jurisdiction, which not only expunges your bill of rights by rendering ineffectual, all the state governments; but is proposed without any kind of stipulation for any of those natural rights, the security whereof ought to be the end of all governments. Such a stipulation is so necessary, that it is an absurdity to suppose any civil liberty can exist without it. Because it cannot be alledged in any case whatsoever, that a breach has been committed—that a right has been violated; as there will be no standard to resort to—no criterion to ascertain the breach, or even to find whether there has been any violation at all.[13] Hence it is evident that the most flagrant acts of oppression may be inflicted; yet, still there will be no apparent object injured: there will be no unconstitutional infringement. For instance, if Congress should pass a law that persons charged with capital crimes shall not have a *right to demand the cause or nature of the accusation,* shall not be *confronted with the accusers or witnesses, or call for evidence in their own favor;* and a question should arise respecting their authority therein,—can it be said that they have exceeded the limits of their jurisdiction, when *that* has no limits; when no provision has been made for such a right?—When no responsibility on the part of Congress has been required by the constitution? The same observation may be made on any arbitrary or capricious imprisonments *contrary to the law of the land.* The same may be made, if *excessive bail should be required;* if *excessive fines should be imposed;* if *cruel and unusual punishments should be inflicted;* if *the liberty of the press should be restrained:* in a word—if laws should be made totally derogatory to the whole catalogue of rights, which are now secured under your present form of government.

You will, doubtless, consider whether the inconveniences may not be very disagreeable, and perhaps injurious, to which this country may be 5.14.11

subjected by excise laws,—by direct taxation of every kind,—by the establishment of fœderal courts. You will advert to the dangerous and oppressive consequences, that may ensue from the introduction of standing armies in times of peace; those baneful engines of ambition, against which free nations have always guarded with the greatest degree of caution. You will determine likewise as to the propriety of being excluded from keeping ships of war without the consent of Congress. The situation of these states renders a naval force extremely desirable. Being bounded on one side by the sea, their coasts are accessible to every lawless adventurer: and without ships to guard them, they are subject to continual depredations. The expediency of this species of defence is manifest. The great advantages to be derived from it,—the strength,—the consequence, which it adds to a nation, are such, that every well-wisher to this country would rejoice to see as large a navy established, as the circumstances of the state can at any time admit of. This, therefore, seems to be a very improper restraint upon the states,—a restraint, which may perhaps eventually prove very injurious.

5.14.12 Upon the whole, my fellow-citizens, if you judge this proposed constitution to be eligible or ineligible, you will accordingly instruct your delegates when they are about to meet in convention. The wisdom of the legislature has judged it advisable to fix the time for deciding on this momentous business at the distance of several months, that you may become thoroughly acquainted with a subject, which so nearly concerns your greatest interests.

5.14.13 I know it is a favorite topic with the advocates for the new government—that it will advance the dignity of Congress; and that the energy, which is now wanting in the fœderal system, will be hereby rendered efficient. Nobody doubts, but the government of the union is susceptible of amendment. But can any one think that there is no medium between want of power, and the possession of it in an unlimited degree? Between the imbecility of mere recommendatory propositions, and the sweeping jurisdiction of exercising every branch of government over the United States to the greatest extent? Between the present feeble texture of the confœderation, and the proposed nervous ligaments? Is it not possible to strengthen the hands of Congress so far as to enable them to comply with all the exigencies of the union—to regulate the great commercial concerns of the continent,—to superintend all affairs, which relate to the United States in their aggregate capacity, without devolving upon that body the supreme powers of government in all its branches?[14] The original institution of Congressional business,—the nature, the end of that institution evince the practicability of such a reform; and shew that it is more honorable, more glorious—and will be more happy for each American state to retain its independent sovereignty. For what can be more truly great in any country than a number of different states in the full enjoyment of liberty—exercising distinct powers of government; yet associated by *one general head*, and under the

influence of a mild, just and well-organized confederation duly held in *equilibrio;*—whilst all derive those external advantages, which are the great purposes of the union? This separate independency existing in each—this harmony pervading the whole—this due degree of energy in the fœderal department, all together, will form a beautiful *species* of national grandeur. These will add lustre to every member, and spread a glory all around. These will command the admiration of mankind. These will exhibit a bright *specimen* of real dignity, far superior to that immense devolution of power, under which the sovereignty of each state shall shrink to nothing.

5.14.14 It requires no great degree of knowledge in history to learn what dangerous consequences generally result from large and extensive powers. Every man has a natural propensity to power; and when one degree of it is obtained, *that* seldom fails to excite a thirst for more:—an higher point being gained, still the soul is impelled to a farther pursuit. Thus step by step, in regular progression, she proceeds onward, until the lust of domination becomes the ruling passion, and absorbs all other desires. When any man puts himself under the influence of such a passion, it is natural for him to seek after every opportunity, and to employ every means within reach, for obtaining his purpose. There is something so exceedingly bewitching in the possession of power that hardly a man can enjoy it, and not be affected after an unusual manner. The pomp of superiority carries with it charms, which operate strongly on the imagination. Nay, it is a melancholy reflection that too often the very disposition itself is transformed,—and for the gratification of ambitious views, the mild, the gentle, humane—the virtuous becomes cruel and violent, losing all sense of honor, probity, humanity and gratitude.[15]—Hence, should it not be a *maxim,* never to be forgotten—that a free people ought to intrust no set of men with powers, that may be abused without controul, or afford opportunities to designing men to carry dangerous measures into execution, without being responsible for their conduct? And as no human foresight can penetrate so far into future events, as to guard always against the effects of vice,—as the securest governments are seldom secure enough;—is it not the greatest imprudence to adopt a system, which has an apparent tendency to furnish ambitious men with the means of exerting themselves—perhaps to the destruction of American liberty?

5.14.15 It is next to impossible to enslave a people immediately after a firm struggle against oppression, while the sense of past injury is recent and strong. But after some time this impression naturally wears off;—the ardent glow of freedom gradually evaporates;—the charms of popular equality, which arose from the *republican plan,* insensibly decline;—the pleasures, the advantages derived from the new kind of government grow stale through use.[16] Such declension in all these vigorous springs of action necessarily produces a supineness. The altar of liberty is no longer watched with such attentive assiduity;—a new train of passions succeeds to the empire of the

mind;—different objects of desire take place:—and, if the nation happens to enjoy a series of prosperity, voluptuousness, excessive fondness for riches, and luxury gain admission and establish themselves—these produce venality and corruption of every kind, which open a fatal avenue to bribery. Hence it follows, that in the midst of this general contageon a few men—or one—more powerful than all others, industriously endeavor to obtain all authority; and by means of great wealth—or embezzling the public money,—perhaps totally subvert the government, and erect a system of aristocratical or monarchic tyranny in its room. What ready means for this *work of evil* are numerous standing armies, and the disposition of the great revenue of the United States! Money can purchase soldiers;—soldiers can produce money; and both together can do any thing. It is this depravation of manners, this wicked propensity, my dear countrymen, against which you ought to provide with the utmost degree of prudence and circumspection. All nations pass this *parokism* of vice at some period or other;—and if at that dangerous juncture your government is not secure upon a solid foundation, and well guarded against the machinations of evil men, the liberties of this country will be lost—perhaps forever!

5.14.16 Let us establish a strong fœderal government, which shall render our Congress a great and eminent body, says one. By all means, replies another; and then they will command the attention of all Europe.—Why, pray, what will it avail you in the hour of distress—in the midst of calamity, though all Europe should pay attention to the Congress? What advantage will it be to the citizens of America, should they elevate Congress to the highest degree of grandeur;—should the sound of that grandeur be wafted across the Atlantic, and echoe through every town in Europe? What will the pomp—the splendor of that *dignified body* profit you, I say, if you place yourselves in a situation, which may terminate in wretchedness? Of what consequence will that state of congressional pre-eminence be to you, or to your posterity, if either the one, or the other should thereby be reduced to a mere herd of——? O great God, avert that dreadful catastrophe.—Let not the day be permitted to dawn, which shall discover to the world that America remains no longer a free nation!—O let not this last sacred asylum of persecuted *liberty* cease to afford a resting place for that fair goddess!—Re-animate each spirit, that languishes in this glorious cause! Shine in upon us, and illumine all our counsels!—Suffer thy bright ministers of grace to come down and direct us;—and hovering for awhile on the wings of affection, breathe into our souls true sentiments of wisdom!—that in this awful, this important moment we may be conducted safely through the maze of error;—that a firm basis of national happiness may be established, and flourish in undiminished glory through all succeeding ages!

P.P.

December 17,1787.

II
28 May 1788

I have in a former paper endeavored to take a view of the leading principles of the new *fœderal constitution*. In pursuing the design of that address it was necessary to make some previous remarks on the nature of civil government in general: This led me to premise the material discrimination between arbitrary constitutions and the constitution of free governments. 5.14.17

The arbitrary species, or those, which fix no other limits to the *supreme rulers,* but their *own wills,* are totally incompatible with the spirit of civil liberty, and exclude every idea of free government. These may be described by the harsher epithet of *despotism.*

Some men may perhaps fancy a distinction where in reality none exists. They may conceive the possibility of a government being constituted, which may with great propriety be denominated *arbitrary;* and yet consider it not as *despotic.* If, however, it be recollected that the term *despotism* is a relative expression arising from the authority of masters over their servants, which authority is founded in the *will* of the masters, it must plainly appear that every degree of *arbitrary* power is *despotic;* and that tyranny in government, whether it be distinguished by the former, or by the latter, appellation, is its regular and natural production. For whenever a power becomes vested in any *agent,* as unrestrained as the *will* of that *agent,* in him are immediately created the properties of a master; and those, over whom he exercises such power, stand *ipso facto* in the relation of servants. 5.14.18

To some the bare mention of *despotic rule* conveys the most alarming ideas of horror; yet at the same time are they satisfied with [ ] as they imagine, of some [ ].[17] With [ ]vency of zeal they urge the expediency of *a plan,* which has for its basis the extended sphere of *human will.* They contend that it is necessary to establish a system, so unrestrained in its nature, in order to effectuate a *strong* and *energetic* government. This desirable object they seem to consider as unattainable by any other means;—and that all institutions, which convey only a limited authority, are inadequate to the purposes of society. 5.14.19

Such a kind of responsibility, as would form a *check* on the *supreme rulers,* is deemed a source of continual impediment; and—to secure any degree of natural liberty, however small a *residuum,* is, in contemplation of their minds, laying the foundation of a *weak* government, liable to endless confusions, and productive of nothing better than sedition and anarchy. They conceive a fondness for this species of government, because it is framed in the *republican stile;* and, although fraught with the seeds of *despotism,* the apparent lovliness of its outward garb hides all the *deformity* of its inward corruptions. Whence it is manifest that distinctions are formed, which are preposterous and merely imaginary. 5.14.20

Nothing, perhaps, has contributed more towards interrupting the repose of mankind than a curious attention to the names and shadows of things, whilst the real essence and substantial parts have been disregarded.

5.14.21 That, which in any particular form has once produced much *evil* and *discontent,* generally stamps a lasting impression on the mind, and is not contemplated but with extreme detestation; although evils of the same nature, when inflicted under a different appearance, are frequently submitted to without repining. Thus, after the expulsion of *Tarquin,* and with him the extinction of *regal* authority in Rome, the name of *King* was ever odius to the *Roman people;* yet did they acquiesce in the exercise of *arbitrary* transactions under a different form of government. Such were they frequently subjected to through the various stages of their *republic;* until at last the sovereign power was established in the person of a *single man.* This change produced a system of government, unbounded as the *regal sway,* and no less susceptible of *tyrannical* proceedings. They could then respect the name of emperor, unlimited as he was, and, though exposed to all the rage of oppression, bow down with reverence, and venerate the *imperial scepter.*

5.14.22 The insidious attempts under a British administration to pervert the former government into a baneful system of tyranny had spread a general alarm throughout America. Opposition to *arbitrary* measures manifested itself among all ranks of people. Diligent inquiries were made to [ ][18] the schemes of their enemies; jealousies excited to an unusual degree with respect to their rights and privileges;—whilst exertions were made, which produced the most desirable effects. All these circumstances conspired in exhibiting very favorable prospects, and promised a lasting security to American liberty.

5.14.23 The injuries suffered under a government, which exposed the people of these states to the machinations of wicked and designing ministers, determined them in the choice of a system, which had principally in view the preservation of their *liberty.* Such was its grand object. In pursuit of this plan, as the great means of national happiness, constitutions were formed for the different states upon principles, salutary in their nature; and tending to perpetuate the freedom and independency of each. To these was added a confederation, under which the separate *republics* so constituted might harmonize in all their *general interests.*

5.14.24 Thus were they situated—when a defect was apprehended in this confederation. The ineffectual endeavors to promote some important advantages, and to answer all the exigencies of the *union,* indicated a weakness in the general government. A revision was deemed expedient. When, therefore, a new constitution was proposed, it became the duty of every American diligently to enquire, *first,* whether this system was coincident with their *standing maxims of liberty;* and, if so—whether conducive to *good policy.* If found derogatory to the former—any consideration respecting the latter should be unnecessary. This alone should mark it, as dangerous, and unworthy of approbation. The genius of America [ ][19] that *no fancied*

schemes of policy should compensate for the adoption of a plan discordant to be favorite principles of liberty. This is not a chimerical illusion, but a solid and interesting consideration. A mind thus convicted must act inconsistent with propriety, and contrary to every sentiment of duty, if it would then approve of the plan.

The writer of this address had, therefore, in his first number chiefly intended to take up this matter only so far as related to its principles—and having conceived that these were incompatible with the admired *maxims* of *American liberty*, his objections on that head were there laid down.

Observing, however, that most of the writers in favor of the plan seem in a great measure to have passed over this *important point*—and recommend it merely from *motives of policy;* it is now intended, as the business of some succeeding papers, to state objections to such of the constituent parts of the plan, abstracted of its principles, as appear, in his opinion, improperly constructed, and calculated to produce ill effects in their operation. These writers seem not to regard any fundamentals in government, provided they can procure a plan, in which they fancy some prospects of immediate benefit are to be discovered. In conformity with the stile of the *proposed constitution*, the favorers of it have, with a peculiarity of self-applause, ascribed to themselves the distinction of fœderalists; while those, who oppose the plan are marked with the epithet of anti-fœderal.[20] 5.14.25

The strong desire, which has been manifested, for a union between the American states, since the revolution, affords an opportunity of making the distinction, as they imagine, to their advantage.—*As fœderalists*, in their opinion, they must be deemed friendly to the *union:*—as *anti-fœderal*, the opposers must, in their opinion too, be considered unfriendly. Thus on the sound of names they build their fame. 5.14.26

For those gentlemen, however, let it be observed that the opponents seem to act on the broader scale of true *fœderal principles*. The advocates for the new code with all sovereignty to be lodged in the hands of Congress. This is not to connect thirteen independent states—but to form one extended empire by compounding the whole, and thus destroying the sovereignty of each. The other party desire a continuance of each distinct sovereignty—and are anxious for such a degree of energy in the general government, as will cement the union in the strongest manner. This they consider as one of the greatest blessings, which can attend their country.

III

4 June 1788

Besides those inherent rights, which should be established as fundamental principles, independent of the constitution, there are certain other maxims essential to every free government. These should pervade the whole plan. 5.14.27

They should be interwoven with its very texture. And, as it is necessary that the first should be preserved sacred and inviolate; so ought the last to be regarded as indispensible. These should be the leading properties, the head—the soul of the system; whilst those exist entire, supreme and uncontroled.[21]

5.14.28 It will not be denied, that *all power is originally vested in the people, and that it should be exercised either* immediately *by themselves,* or mediately *by their representatives*. These are *maxims,* without the observance of which the liberty of every nation must expire. When the power is exercised by their representatives, it is expedient that the representation be *ample* and *complete*. It should be *ample,* that amongst the *members* there may be a competent knowledge of the *constituents* their sentiments, connections, views and habits; and that amongst the *constituents,* there may generally be a due degree of knowledge respecting the virtues and abilities of the *members*.[22]

5.14.29 In extensive territories, where the people are widely dispersed, and individuals can have very little communication beyond the circle of their own neighbourhood, the representation should also be extensive. In countries thus situated, unless the legislature be numerous, there cannot be expected amongst the *members* thereof a general knowledge of their constituents: and when the *member* to be elected bears a very small proportion to the *number* of electors, it is utterly improbable that the *majority* should have an adequate knowledge of those, who will be elected. So that a great part of the community must in a manner be obliged to submit their most important concerns into the hands of a few persons unknown to themselves, and of whose wisdom, integrity and patriotism they can form no competent judgment.

5.14.30 Again, the representation should be *complete*, that is, it should be such as to comprehend every species of interest within the society. All orders of men, who have any permanent interest in the government, as far as practicable, ought to be represented. Regarding, then, the great diversity, which pervades most communities, from the highest landed concerns through the various stages of mercantile and mechanic interests, we must discover the necessity of an extensive delegation. When, therefore, the number of *representatives* in a legislature is very small, this affords objections, not only because they are not numerous enough to contain a competent knowledge of their constituents: they are inadequate to, and cannot sufficiently respect, all the complicated,[23] variant and opposite interests, which must necessarily subsist in a commonwealth, whose inhabitants are spread over a wide-extended country. The smallness of their number enhances the dignity of their *seats;* and none can expect to obtain a *seat*, except men of the most elevated station. Thus in the beginning of a government so constituted there will be laid a foundation for the exercise of undue influence, whereby every

branch of supreme power will be in a manner monopolized by one set of men: and thus the delegation will become partial. For, besides the effect of this undue influence in elections, the dispersed situation of the electors, together with that of the candidates, will ever produce much division amongst the suffrages;—and so the select party, who will be distinguished by their superior wealth, being the leading *junto* in this business, will easily procure a competent number to decide for themselves or their favorites.

Thus it will generally happen, that elections will be determined, not by the majority of the people, but perhaps by an inconsiderable part of them; and the persons chosen will be such, whose situation and rank in life had removed them far from a knowledge of the *great body* of the people. They will consequently be unacquainted with the customs, feelings, opinions and wishes of most of their constituents: and as the constituents will be unacquainted with their representatives,—*these* will not possess the confidence of *those*. Doubt and distrust will prevail.—That course of congenial sentiment—that reciprocity of common interest between the *legislature* and *bulk* of the nation, which should be the soul of *republicanism,* and are the chief objects of a free, unbiassed and general representation, will not exist in this kind of government. How, then, can it be expected that a strict regard to the *good* of all will mark the public proceedings? Who can really imagine that a *body,* thus constituted and thus invested with sovereign authority, will regularly devote their labors to promote the happiness, prosperity and freedom of a community, over whom they bear the rule—when they view themselves advanced to this state of exaltation—when this high degree of dignity will tempt them to look down with indifference, perhaps contempt, on the inhabitants of a spacious territory, as the subjects of their government—and when they contemplate these, as generally unconnected with themselves in all their most important concerns?—The uniform experience of ages operates against the idea. It may be dangerous to indulge in such a scheme of policy—lest its fairest prospects should prove visionary indeed!—lest in its exercise the directly contrary effects should be produced. 5.14.31

For the foregoing reasons, the legislative powers proposed to be granted according to the new system appear liable to material objections. For herein the number of representatives being too small to encourage the idea of a *full* or *complete* deputation, there is no prospect of securing a due regard to all the different interests necessarily arising amongst the numerous inhabitants of America, spread over a territory so extensive—so vast—so various in climate, products, habits and connections. 5.14.32

That part of the legislature, which is particularly denominated the *house of representatives,* is indeed the only popular branch; and although these officers are to be chosen by the immediate suffrages of the people, yet their dignity being necessarily great in proportion as their number is small, fair 5.14.33

and unbiassed elections are scarcely probable, if not impracticable.

In the appointment and constitution of the other branch,[24] the *senate*, we have but the shade of a deputation from the people. The state-legislatures, it seems, are to elect this *body*. The objections, which apply to the *house of representatives*, hold more strongly with regard to this, in as much as longer continuance in office will be productive of more danger; and the mode of appointment, by rendering them more independent of the people, will preclude *these* from having any decisive influence on their conduct.

5.14.34 It is no argument in favor of the manner proposed, that it is the same, by which the members of the present Congress are chosen. The nature and end of the one being totally different from those of the other, if they be duly considered, it may, perhaps, be thought not inexpedient to vary the proceedings respecting them. The Congress under the present confederation are the deputies of sovereign states in the full exercise of independent government. These deputies are appointed by the legislatures thereof, not for the purpose of regulating the internal police of the states, but to superintend their general and foreign affairs so far as all the states are concerned in common. When, therefore, the legislature of any state is actually existing and in the exercise of their office, it seems not improper that such deputies should be appointed by them: so in strictness they appear to be the deputies of the legislature; and are to them immediately amenable. The proposed *senate* are to exercise a share of legislation in the general government, and to participate in the sovereignty of America. Thus circumstanced, they will know not any authority superior to that, whereof they themselves possess a part. They are intended, as such, to be a branch of the representation of the people. To the people they ought to be amenable: and by the people they ought to be chosen.

IV

11 June 1788

5.14.35 Although the *senate* and *house of representatives* are to be established, and it seems to be the spirit of the proposed plan of government, that they should be considered as the grand *deputation* of America—the great aggregate *body*, to whom shall be delegated the important trust of *representing* the whole nation—the august, puissant *assembly*, in whom shall reside the full majesty of the people: yet, it seems too, these alone shall not be sufficient to exercise the powers of legislation. It is ordained, as a necessary expedient in the fœderal government, that a *president* of the United States (who is to hold the supreme *executive* power) should also concur in passing every law.

In monarchy, where the established maxim is, that the king should be respected as a great and transcendent personage, who knows no equal—who in his royal political capacity can commit no *wrong*—to whom no evil can be ascribed—in whom exists the height of perfection—who is supreme above all, and accountable to no earthly being, it is consistent with such a maxim, that the *prince* should form a constituent branch of the legislature, and that his power of rejecting whatever has been passed by the other branches should be distinct, and co-extensive with that of either of those branches in rejecting what has been proposed and consented to by the other. It is necessary that the fundamental laws of the realm should ascribe to the king those high and eminent attributes—that he should possess in himself the sovereignty of the nation; and that the regal dignity should distinguish him, as superior to all his subjects, and in his political character endowed with certain inherent qualities, which cannot be supposed to reside in any other individual within the kingdom: otherwise, that constitutional independence, which the laws meant peculiarly to establish in his person, would not be preserved. To this end the king of England is invested with the sole *executive* authority, and a branch of legislative jurisdiction so far as to pass his *negative* on all proceedings of the other two branches, or to confirm them by his *assent*. 5.14.36

This secures to him the intended superiority in the constitution, and gives him the ascendant in government; else his sovereignty would become a shadow—whilst that doctrine, whereby he is declared to be the *head*, the *beginning* and *end* of the great *body politic*, would prove to be nothing more than mere sound. This two-fold jurisdiction established in the British monarch being founded on maxims extremely different from those, which prevail in the American States, the writer hereof is inclined to hope that he will not be thought singular, if he conceives an impropriety in assimilating the component parts of the American government to those of the British: and as the reasons, which to the founders of the British constitution were motives superior to all others to induce them thus to give the *executive* a controul over the *legislative*, are so far from existing in this country, that every principle of that kind is generally, if not universally, exploded; so it should appear that the same *public spirit*, which pervades the nation, would proclaim the doctrine of prerogative and other peculiar properties of the royal character, as incompatible with the view of these states when they are settling the *form of a republican* government.[25] Is it not therefore sufficient that every branch in the proposed system be distinct and independent of each other—that no one branch might receive any accession of power (by taking part of another) which would tend to overturn the balance and thereby endanger the very *being* of the constitution? Whilst the king of England enjoys all the *regalia*, which are annexed to his crown—whilst he exercises a transcendent dominion over his subjects, the existence whereof is coeval with the first rudiments of their constitution—let the free citizens 5.14.37

of America, consulting their true national happiness, wish for no innovation, but what is regulated according to the scale of equal liberty, or which may not destroy that liberty by too great a share of power being lodged in any particular hands;—let this collateral jurisdiction, which constitutes the *royal negative,* be held by kings alone, since with kings it first originated:—Let this remain in its native soil, as most congenial to it; there it will cumber less, and be more productive,—here it will be an exotick, and may poison the *stock,* in which it may be engrafted.

5.14.38 It will be said, perhaps, that the power, granted the president, of *approving* or *disapproving* the proceedings, which have passed the senate and house of representatives, will not be so decisive in its nature as the king's *negative.* True it is, this power of rejecting does not extend so far as primarily to produce an entire overthrow of any law, which has passed those *two houses:* but it may be expected that in many instances this *negative* will amount to a final and conclusive rejection. For as a law, which has been once disapproved by the president, cannot be re-passed without the agreement of *two-thirds* of *both houses,* there can be no doubt, it will frequently happen that this concurrence of *two thirds* cannot be obtained. The law must then fall: and thus the president, although he has not the power of *resolving* originally and *enacting* any laws, independent of those two houses, hath nevertheless in the legislative scale of government a weight almost equal to that of two thirds of the whole Congress. If the system proposed had been calculated to extend his authority a little farther, he would preponderate against all—he alone would possess the sovereignty of America. For if the whole executive authority and an absolute, entire *negative* on the legislature should become united in one person, these must, with regard to *that person,* destroy every idea of a subject. Thus circumstanced he cannot be the object of any laws; he will be above all law: as none can be enacted without his consent—he will be elevated to the height of supremacy.—

5.14.39 How near will the *president* approach to this consummate degree of power! The portion allotted him may, however, be amply sufficient to give him the ascendant in the constitution. He must continually acquire great accessions of weight in every scale of government, as *chief magistrate* and *generalissimo* of the United States—at the same time possessing so great a share in the legislature, as a revision of all *bills* and other proceedings which shall have passed the senate and house of representatives with a discretionary right of rejecting them—united with the senate in making treaties, appointing all public ministers, judges, and a train of other officers, who will be necessary for carrying on the business of government; thus dispensing honor and profit throughout America—whilst copious streams of influence must flow from him, as from a source. Can the different departments be duly balanced when all these high powers concenter in one branch? Is it not

rather probable that this branch will destroy the balance, and eventually rise to the fulness of dominion?

When the *spirit* of America becomes such, as to ascribe to their president all those extraordinary qualities, which the subjects of kingly governments ascribe to their princes: then, it is presumed, and not till then, he may consistently be invested with a power similar to theirs.[26] 5.14.40

It is remarkable how the president and senate mutually participate in the exercise of a two-fold jurisdiction. How, then, can it be surprising to any one, if some citizens, truly jealous of their liberties, are alarmed with the apprehensions of *aristocracy?* Those, who seriously reflect on the properties of human nature, and who possess republican principles, will suppose they conceive grounds for such apprehensions: those, who have different sentiments, will not care whether there are grounds for such apprehensions, or not.

V
18 June 1788

When a change, so momentous in it's nature, as that of new modelling a *plan* of government, becomes the object of any people's meditation, every citizen, whose mind is duly impressed with a regard for the welfare of his country, will consider himself under an indispensible obligation to make some such enquiries, as the following.—Whence flows the necessity of a change?—Does it proceed from certain *vicious properties,* which reside in the old system and form the essential parts of it?[27]—Or will such a measure become eligible, because *evils* have arisen from the feeble texture of the plan, or a loose exercise of government, which could not well be avoided?—What are the *evils* complained of? and what will be their correspondent remedies?—Are the evils *radical,* and not be removed but by a *general* reform throughout the constitution?—Or do they result from a defect in some particular branch only? and may an adequate remedy be effected by introducing a new regulation merely as to *that* branch? 5.14.41

If investigations like these are seriously and dispassionately pursued, and it should be found that the present confederation of the American states contains *vicious properties,* which are inherent, fundamental, and tending to produce a general corruption, the *necessity of a change* must then be manifest. This discovery will lead to another enquiry; and that is—Do such properties pervade the whole system and contaminate all the parts of it? If so—then a *thorough change* will appear to be expedient, and it may be necessary to new model the system. 5.14.42

5.14.43 If, on the other hand, *evils* are found existing, which proceed, not so much from any internal corrupt *qualities,* as from the *feeble texture* of any parts of the system, or a *laxity* in the exercise of it's powers, it should seem adviseable to make alterations so far as to add a due degree of strength to the *weak parts,* and thereby insure *efficacy* in the government.

Should it appear, after a proper enquiry into the nature of the evils, that they are *radical,* and strike at the *vital principles* of the constitution—then to apply a *correspondent remedy,* an institution, which would produce a *general reform,* might with great propriety be deemed requisite.

If the defects are of a trivial nature, and subsist merely in some particular department or branch of the system—then amendments in the *defective branch,* tending to give energy where it had hitherto been wanting, would be amply sufficient for removing the *evils* and forming a competent remedy.

5.14.44 In order to discover how far the present system is vicious, or inadequate to the purposes of *this* great confederated society, for which it was established, a retrospect of the *original design* of the confederacy *itself* may afford no small degree of assistance.—Let it be recollected, then, that the *primary* object was to *form a perfect union.* This is manifested by the very "stile of the confederacy."[28]—That it was intended to promote *justice* equally between all the states cannot be doubted; because it is an institution, calculated to unite a number of *independent republics* under a *firm league* of amity,[29] and to provide that contributions of every kind, which had been, or might be, necessary towards supporting their *general* government, should be furnished in due proportions[30]—whilst it was stipulated that a *mutual intercourse* and *reciprocal privileges* and *immunities* should subsist between the citzens of *all* the several states.[31] Again, to *ensure domestic tranquility* must have been another important object with the framers of this confederation: for union, harmony and justice cannot fail to promote tranquility; and whenever a contract is formed for the purpose of procuring the *three first,* it follows, as a regular consequence, that the *other* should partake of the intention.—This great association is expressly declared to be entered into between the states "for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon, them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever."[32]

5.14.45 The objects herein recited do certainly form the chief design of the present confederation; and the same are declared to be the great *ends* of the *proposed* plan of government. So far then do they agree. A subject of much contention, however, and with which the minds of different citizens are variously agitated, has arose.

5.14.46 It has been said that some of *these advantages,* and of high import too, cannot be obtained under the present system. It is the opinion of some citizens that the constitution proposed to us will secure all *these objects* and

form a complete remedy for every *evil* now subsisting; whilst it is asserted by others that amendments might be introduced in the former, which would be competent to every *good* purpose, and promote *some* of very great consequence, that might be endangered by an adoption of the latter. Thus it is inferred that *this* system extends too far—and, like many human institutions, flits by a rapid progress from *one* extreme to *another*.

5.14.47 Those, who cannot approve of this plan, have very strong objections to it, because they apprehend that no *security for their liberties* will remain after it's adoption: and although some of the *ends* proposed might be obtained thereby; yet they think the sacrifice will be too great for the benefit to be received. To enjoy a competent degree of *liberty* they consider as the greatest of human blessings—for the loss of which no acquisitions whatsoever can compensate. They esteem this (and deservedly too) as the *soul* of *all* political happiness.

5.14.48 It seems to be agreed on all sides that in the present system of union the Congress are not invested with sufficient powers for *regulating commerce*, and procuring the *requisite contributions* for all expences, that may be incurred for the *common defence* or *general welfare*. Hence arise the *principal* defects;—and it is presumed that the *evils* resulting from *these weak* branches in the fœderal government might be adequately remedied by making due amendments merely *therein*.

5.14.49 It is thought by some that the powers of making and enforcing the observance of treaties are not ample enough at present. If so—cannot these be enlarged so as to answer every desirable purpose of *that branch* in the fœderal institution? Thus, while many citizens cannot think that the confederation is *fundamentally vicious*, but that all the *evils* now complained of do rather proceed from a weakness in some of its parts, they apprehend no necessity for an innovation further than strengthening *those parts*. If such measures were effectually established, they conceive that all the great ends of the *general* government might be promoted.—No contention, therefore, subsists about supporting a *union*, but only concerning the *mode;* and as well those, who disapprove of the proposed plan, as those, who approve of it, consider the existence of a *union* as essential to their happiness.[33]

P.P.

May 31, 1788.

1. See Republican Federalist 4.13.15 n. 11.
2. The original reads, "them."
3. See Federal Farmer IV, 2.8.50 n. 40.
4. The source of this quotation has not been found.
5. See Pennsylvania House Minority 3.2.7.
6. James Wilson, "Address to the Citizens of Philadelphia," 6 October 1787, McMaster and Stone 143–44. See references in Federal Farmer IV, 2.8.50 n. 38; cf. [New Hampshire], Farmer 4.17.14 n. 9. On the general question of the need for a bill of rights see Mason 2.2.1. n. 1.
7. This argument should be contrasted with that of Publius in *The Federalist* no. 10

and with Publius' discussion of the causes of dissention among the states in nos. 6–8; see also Brutus I, 2.9.16.

8. *Commentaries* I, 318.

9. See Brutus VIII, 2.9.97 n. 67.

10. See Democratic Federalist 3.5.6 n. 6.

11. On trial by jury see references in Plebeian 6.11.15 n. 13.

12. See references in Federal Republican 3.6.5 n. 4; Centinel I, 2.7.5 n. 2.

13. See Agrippa VI, 4.6.23 n. 14.

14. On Anti-Federalist opposition to consolidation see Plebeian 6.11.15 n. 9.

15. The Impartial Examiner here reveals both the keen Anti-Federal insight into the problem of perpetuating the free republic and the rather narrow Anti-Federal solution to this problem. See Columbian Patriot 4.28.12–13; Warren 6.14.157. On the Federalist side compare *The Federalist* no. 49 with the views of Fabius (Ford, *Pamphlets* 183, 188, 213–15) and James Wilson's Fourth of July Oration, *Boston Gazette and the Country Journal* 28 July 1788. Cf. Abraham Lincoln, "Address before the Young Men's Lyceum of Springfield Illinois," 27 January 1838, *Collected Works* I, 108–15; and Harry V. Jaffa's interpretation of Lincoln's argument in his *Crisis of the House Divided* 183–232.

16. The original text has a semicolon at this point.

17. The only copy of this day's Virginia *Independent Chronicle* that I have found is obscure at this place.

18. See note 17.

19. See note 17.

20. On the confusion of names see Martin 2.4.43 n. 12.

21. See Federal Farmer XVI, 2.8.196 n. 118.

22. For other Anti-Federal discussions of representation see Federal Farmer II, 2.8.15 n. 11.

23. Semicolon in the original.

24. Semicolon in the original.

25. For comparisons of the British monarch and the United States President see Philadelphiensis XII, 3.9.96 n. 37.

26. Cf. [Maryland] Farmer II, 5.1.30 ff. and n. 24.

27. This is exactly what Publius does argue in *The Federalist* no. 15.

28. Articles of Confederation, Art. I: "The Stile of this Confederacy shall be 'The United States of America.' "

29. Ibid. Art. III.

30. Ibid. Art. VIII.

31. Ibid. Art. IV.

32. Ibid. Art. III.

33. It is not unlikely that this was written with a view to the argument of the first thirty-eight papers of *The Federalist*, all of which had been published and were available in Virginia by the time Impartial Examiner was writing. See *The Federalist* p. xiv. Cf. references in Henry 5.16.6 n. 18.

Reply to Cassius
By
Brutus

VIRGINIA INDEPENDENT CHRONICLE
14 May, 1788

In this short piece, Brutus (unrelated to the famous New York Brutus, 2.9) defends Richard Henry Lee against attacks by Cassius.[1] He deals primarily with the separation of powers (quoting Montesquieu), objecting especially to the combination of the Executive and the Senate in the treaty power and the inadequate provision for Executive impeachment. He stresses the need for greater restrictions on the rulers, (quoting Cato's Letters) and ends with miscellaneous criticisms of the Constitution.

1. See Lee 5.6 intro.

Mr. Davis.

Sir,

In your Chronicle, of April the 2d, you have furnished the public with a piece under the signature of Cassius, which states that "opinions have been *insidiously* disseminated, respecting the *fœderal constitution,* which are entirely devoid of truth," etc.[1] Whether this assertion is true or not remains with Cassius to prove, and to shew the impropriety of—The term *insidiously* may indeed be applied, as Cassius has applied it, abusively, to treat the most decent consideration of a subject, which[,] deeply interesting every freeman of the state[,] requires to be freely and fully discussed—or why was it placed before the public for the consideration of the people? But Cassius will do well to shew by what authority he calls a mere project or proposed plan of government "the Fœderal Constitution"—Were any citizen *insidiously* to disseminate falsehoods against a government established, there would be occasion for censure, but surely no man of sense or modesty, will arrogate to himself and his associates an exclusive right to give opinions upon a submitted question which essentially concerns the dearest rights of humanity. It is certainly to be lamented, that a subject so momentous as government, cannot be temperately and decently agreed upon, without producing 5.15.1

the most illiberal abuse and indecent violation of all good sense and good manners! Mr. Lee had certainly as good a right to give his sentiments to the proposed plan of government, to his friend, as Cassius had to trouble the public with his curious dissertation on parts of Mr. Lee's letter—the first objection to which letter Cassius thinks to be what follows—"It has hitherto been supposed a fundamental maxim that in governments rightly balanced, the different branches of legislation should be unconnected, and the legislative and executive powers separated"[2]—The candid reader may observe here that as an American is giving his opinions to an American concerning American government, the principles which reign in the American, and not in the British form of government, should have occupied his mind. In support of Mr. Lee's opinion, let us, passing over similar declarations in other states, see what is asserted by two of the most considerable states in the union. The Massachusetts bill of rights contains these remarkable words—"In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; the executive shall never exercise the legislative or judicial powers, or either of them; to the end it may be a government of laws and not of men."[3] This sensible republic considers the union of either of these powers as producing a government of *men* and not of *laws*. The bill of rights or constitution of our country declares, "The legislative, executive, and judiciary departments, shall be separate and distinct, so that neither exercise the powers of more than one of them at the same time."[4] The judgment of the learned Montesquieu will be found analogous to these declarations of Virginia and Massachusetts. This able writer says, "whenever the legislative and executive powers are united in the same person or in the same body of magistracy, there can be then no liberty; because apprehensions may arise that the same monarch or senate should enact tyrannical laws to execute them in a tyrannical manner. Again, there is no liberty if the power of judging be not separated from the legislative and executive powers. Were it joined with the legislative the life and liberty of the subject would be exposed to arbitrary controul, for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with all the violence of an oppressor. Miserable indeed would be the case, "were the same man or the same body of men, whether of the nobles or the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and that of judging the crimes and differences of individuals"[5]—I may now be allowed to call upon Cassius in his own *civil* language—"*Cassius what say you? are these quotations just or not? I dare you to speak out. I should not, Sir, have produced them, did I not conceive it necessary to convince the world, that you are either totally ignorant of the subject on which you write, or that you have ungenerously attempted to deceive the people against your better information.*" It is reasonably to be

expected that the good people of America will rather approve of the American ideas of Mr. Lee, than the ill understood British ideas of Cassius. I will not dispute with you Cassius, or with your authority, whether "the negative given to the King (of Great-Britain I suppose you mean) on the proceedings of both houses of parliament, was conceived absolutely necessary to preserve the balance of power, although the King at the same time exercises the whole executive power." But I think Cassius will find in Lord Clarendon's history, that both houses of parliament joined in declaring to the people, "*that the King of England was obliged by his coronation oath to pass such laws as the people should choose by the two houses of parliament, and that since laws have passed by way of bills they did not find that ever the Kings did deny them, otherwise than is expressed in that usual answer* "LeRoy s'avisera," *which signifies rather a suspension than a refusal of the royal assent*."[6] It will be very difficult I believe, to find three instances in the course of one hundred years back of any such prerogative being exercised by the Kings of England. However let it be granted, that the British Kings have a negative on the bills proposed by the two houses, and that they have also the executive power, does it follow that Mr. Lee did not *reasonably* object to the proposed plan of government which joins the president with the senate in the general discharge of executive powers, when they are both of them branches of the legislature, and in some instances the whole of the legislature, and when at the same time the senate are the sole judges of impeachments, thus rendering responsibility difficult, if not impracticable? Here your favorite constitution of England foresakes you—in that system the King is aided in the exercise of his executive functions by a privy council (not by the house of Lords) the members of which are put in the way of responsibility by being obliged to sign the advice they give in a council book. Doctor Blackstone says that the abuse of the kingly power in making treaties to the detriment of the nation is checked "by the means of parliamentary impeachment for the punishment of such ministers as from criminal motives advise or conclude any treaty, which shall afterwards by judged to derogate from the honor and interest of the nation."[7]—Now let me again apply in the civil words of Cassius—"*stand forth, thou deliberate deceiver of the public and answer*"—if a treaty were made by the president and senate that should be found prejudicial to the interest and honor of the United States, how is punishment to be applied? By impeaching the senate before the senate, who are to judge of their own crimes in this respect, and inflict punishment in themselves? The public will then judge, Cassius, of these your insolent questions proposed to Mr. Lee—"*Do you not sincerely believe that the concurrence of the senate with the president in the execution of this power is a happy innovation (innovation on what Cassius?) in the fœderal constitution? Will it not afford a strong additional security to the people for its faithful performance? Do you not conceive it to be one of the loveliest features of the new constitution?*" I will help you to answer these

handsome questions yourself by a citation from Cato's letters, written by very able defenders of public liberty in the early parts of the present century—"Considering what sort of a creature man is, it is scarce possible to put him under too many restraints, when he is possessed of great power: He may possibly use it well; but they act most prudently, who, supposing that he would use it ill, enclose him within certain bounds, and make it terrible in him to exceed them. Men that are above all fear, soon grow above all shame. *Rupto pudore et metu suo tantum ingenio utebatur,* says Tacitus of Tiberius. Even Nero had lived a great while inoffensively and reigned virtuously. But finding at last that he might do what he would, he let loose his appetite for blood, and committed such mighty, such monstrous, such unnatural slaughters and outrages, as none but a heart bent on the study of cruelty could have devised"[8]—I would advise you Cassius to read Cato's letters, they may perhaps inform your mind, which appears at present to be extremely uninformed, and render you a better citizen of a free government than the principles you now profess seem to promise. Are you sure, Cassius, absolutely certain, that a King of England can make *a valid treaty* that shall contravene the previously established law of the land, whether common or statute, because as you say *the law of nations is part of the law of the land.*—But so is the law of parliament part of the law of the land, and yet either house of parliament that can make this kind of law, cannot by their single determinations repeal or alter an act of parliament, or the common law. Do you think, Cassius, that the King by treaty can alienate the British dominions? Every man acquainted with the subject will, I believe answer NO. That in such case an act of parliament must give validity to the treaty. Yet by the new plan of government, a treaty made by the president and senate shall be "the supreme law of the land, and the judges in every state shall be bound thereby."—That seems to be saying in other words that a part shall be greater than the whole—Or that though three branches must make the law, two may destroy it—I apprehend, Cassius, these strictures will prove, even to yourself, that you are but little fitted to give opinions upon government, to the public; where quackery is more surely to be discovered than in the private prescriptions of other professions, and that you have but lightly considered the proposed constitution for the states which you so rudely (I wish I were not compelled to say weakly) support—If you really understand any thing of this latter subject, so adventurous a champion as yourself may give the public satisfactory reasons why a power is given to the new Congress over the times, places and manner of holding elections for representatives; because such a power is capable of the grossest abuse by ordering all the elections of this country to be held at the most inconvenient places, where few can or will attend to vote? Why so ill an opinion of the justice and judges, of our country should be entertained as that citizens of other states and foreigners should have liberty to carry our citizens into the fœderal courts for the most trifling causes? Perhaps you know that England

and Scotland are united for every good purpose, and yet that an Englishman cannot originally sue a Scotchman in any court erected by an act of parliament of Great-Britain, although in great cases an appeal may go to the house of Lords? I believe you will find that this degrading idea of our courts is truly original, and that nothing similar to it, is to be found in the history of nations. An Englishman will not allow you to carry him out of his own country for debt, but he may carry a citizen of Virginia to Philadelphia, or wherever the new Congress may appoint, upon every frivolous pretext, and there try him without a jury—because the supreme fœderal court in appeal shall have jurisdiction both "as to law and fact." Tell us if you please why no declaration is made in form of a bill of rights to secure the freedom of the press, the trial by jury, common law securities in criminal accusations, and to save from violation the rights of conscience? So *able* an advocate as you for the new constitution may also assign a good reason why Delaware, that pays but a sixty-seventh part of the general expences, should vote on a money bill in the senate equally with Virginia that pays a sixth part of the same expences? Perhaps you may satisfy us that another convention cannot be obtained to remedy the defects that are so apparent in this proposed system. Whether Mr. Lee does or does not, think it worth his while to correct your errors, the government under which we are to live, is too serious a matter to suffer your deceptions and abuse of good characters to pass unnoticed.*—You should remember, Cassius, that there is a great difference between a railer and a reasoner; that good sense and good manners are essential to good writing.

Brutus.

Princess-Anne,
April 18, 1788.

**Will you have the goodness, Cassius, to reconcile this paradox of yours to the public,* that the House of Commons has been found by experience a sufficient counterpoise to the kingly powers in England, *although the* same House of Commons is supposed to be always under the influence of the crown by bribery of different kinds. *It will not do to suggest, as you have done, that it will take less money to bribe one hundred than five hundred, because the same argument should persuade America to put their government into the hands of one man, because less money may do to bribe one, than one hundred men!*

1. Cassius' criticism was directed against Lee's letter to Governor Randolph of 16 October 1787, which is printed above, 5.6. The Cassius essays appeared in the *Virginia Independent Chronicle* of 2, 9, and 23 April 1788.

2. The quotation is from Lee's letter 5.6.1. Cassius drew from Blackstone the same principle that Publius, a month before, had drawn from Montesquieu, "that liberty is *only* endangered when *the whole* of the power of both making and enforcing laws is vested in one man, or in the same body of men." *Virginia Independent Chronicle* 2 April 1788; cf. *The Federalist* no. 47, 325–26. On the separation of powers see Centinel II, 2.7.50 n. 29.

3. Massachusetts Constitution, 1780, part one, section XXX, Thorpe, *Federal and State Constitutions* III, 1893, See *The Federalist* no. 47, 327–28.

4. Virginia Bill of Rights, 1776, section 5, Thorpe *Federal and State Constitutions* VII, 3813. Note the use here of "our country." See *The Federalist* no. 47, 330. Cf. vol. 1 above, chap. 4, n. 4.

5. Montesquieu, *The Spirit of Laws* XI, ch. 6.

6. Edward, Earl of Clarendon, *The History of the Rebellion and Civil War in England* V, vol. 1, part 2, pp. 734, 743.

7. *Commentaries* I, 257.

8. [Thomas Gordon and John Trenchard], *Cato's Letters* (1733), no. 33 (17 June 1721).

Speeches of Patrick Henry in the Virginia State Ratifying Convention

June 1788

Although he wrote no Anti-Federalist pamphlet or essay, Patrick Henry argued mightily against the Constitution in the Virginia Ratifying convention. The Virginia convention contained the most distinguished Anti-Federalist group in the country; yet Henry carried the opposition argument for the first week almost alone, in a series of six speeches covering the whole Anti-Federal ground, an exhibition of stamina, argument, and rhetoric unmatched on either side during the ratification debate. Henry's forensic skill;[1] his exploitation of his popularity with the independent yeomanry, with whom he shared a common origin; the maintenance of a simple, common manner and, some said, even an affected vulgarized pronunciation, contributed to his reputation as a demagogue, a reputation reenforced by his subsequent reentry into politics in 1799 as a Federalist.[2] It is doubtless true, as Nevins said, that he was not a "great constructive statesman,"[3] but that he was a man of substance as well as talent is demonstrated by his performance at the Virginia ratification convention.

Unfortunately Henry left no written record elucidating his political opinions, and his biographies do not so much discuss underlying guiding principles as enumerate specific positions.[4] George Ticknor Curtis, whose judgment is more favorable than that of many historians, described with approval Henry's contemporaries' opinion that, although wise, he lacked comprehensiveness, "and that the mere intensity with which he regarded the ends of public liberty was likely to mislead his judgment as to the means by which it was to be secured and upheld."[5] He was a Union man; indeed, it was he who at the First Continental Congress—his only public service outside Virginia—stated the fundamental principle of the nationalist position, words echoed in 1787 by James Wilson at Philadelphia. "The Distinctions between Virginians, Pennsylvanians, New Yorkers and New Englanders are no more. I am not a Virginian, but an American."[6] It was, however, as a Virginian that he performed most of his public service, as governor of Virginia and member of its House of Delegates, and it was through the eyes of a Virginian that he viewed American concerns. He declined an invitation to

serve as one of Virginia's delegates to the Federal Convention in 1787, to a considerable extent at least because of his opposition to the Jay negotiations with Spain, in which he saw a willingness on the part of the Northern States to barter the United States claim to the Mississippi for commercial advantage.[7]

Henry's brilliant, turbulent, repetitious argument before the Virginia convention is unusually difficult to edit. Printed here in their entirety are his first two speeches (4 and 5 June) and two later, shorter speeches on a bill of rights (16 and 17 June). Other important speeches or statements are given in briefer form (9 and 12 June) or as interpolations, enclosed in braces { }, in the main statements (7 and 14 June). Bracketed (or sometimes parenthetical) interpolations summarizing omitted passages are from the original. It should be noted that Henry's discussions of the Mississippi negotiations and the peculiar interests of the South—for example, in regard to commercial regulations—are largely omitted here. While this great "contest for empire," as Anti-Federalist Grayson called it,[8] was an important concern of the Southern Anti-Federalists, it was subordinate to more general questions of principle and was only discussed at length, after the ground of principle had been covered.

The thread on which Henry's arguments against the Constitution are strung is the spirit of true federalism and Virginia patriotism. The Constitution, speaking the language of "We the People," destroys the confederation and, with it, Virginia (5.16.1–2, 6, 8, 9, 22–23). Although the connection is not always explicitly made, Henry's advocacy of federalism is tied to several further arguments. He contends that the Constitution represents a hankering after glory and riches rather than liberty, the true object of government and the object associated with the individual states and their federal union under the Articles of Confederation (5.16.2, 6). He denies that he favors secession or separate confederacies (5.16.11), insisting that only liberty is dearer to him than Union (5.16.6). Although Henry does not make any extensive use of the small republic argument, he indicates his acceptance of it (5.16.11). He contends that under the new Constitution the representation is grossly inadequate (5.16.2, 8, 19, 29); that, unlike the British system, there are no real checks or true responsibility (5.16.2, 7–8, 17), and that the only reliance is on the virtue of the rulers (5.16.7, 11, 17). The Constitution is not sufficiently hard-headed. "Tell me not of checks on paper; but tell me of checks founded on self-love" (5.16.14, 17).

Henry defends the system of requisitions (5.16.15–19) and sees the power to tax under the Constitution as especially dangerous, as the end of the states in any significant form, and as the source of excessive burdens on the people. Under the Constitution the people give up everything and lose all their capacity to check the government and preserve their liberty (5.16.2, 6, 7).

The advocates for the Constitution pretend external dangers and internal

turbulence where none exist (5.16.1, 2–4). So far as there are dangers, Henry relies on the American spirit to preserve us (5.16.2, 12). It is not new constitutions but industry and economy that are needed to solve America's economic problems (5.16.10). Republican simplicity and the love of freedom are the rocks on which American liberty rests, and American laws must be conducive to and protective of this spirit (5.16.12–13). The absence of a bill of rights, will all its implications, indicates how far the Constitution is from the true American spirit of liberty (5.16.24–25, 34–41).

The text is taken from *Debates and Other Proceedings of the Convention of Virginia, Convened at Richmond, on Monday the 2d day of June, 1788, for the purpose of deliberating on the Constitution recommended by the Grand Federal Convention* (Petersburg 1788–89), 3 vols. Elliot's report of the Virginia debate is taken from this edition; and although Elliot makes frequent minor changes and mistakes (e.g., in his dates), it has been thought more convenient for the reader to give footnote references to Elliot rather than to the inaccessible 1788 edition.

1. "He appeared to me to speak," Jefferson wrote on first hearing Henry, "as Homer wrote." *Autobiography*, in *The Writings of Thomas Jefferson*, ed. P. L. Ford (New York 1892) I, 6.

2. Henry championed unpopular causes, such as the rights of Tories and assimilation of Indians, as well as popular ones, and he presented a solid case for his 1799 Federalism. See Jefferson to Madison, 7 May 1783, *The Writings of Thomas Jefferson* (ed. Ford) III, 318; Nevins, *The American States before and after the Revolution* 324; Moses Coit Tyler, *Patrick Henry* (Boston 1887) 417–19.

3. Nevins, *The American States before and after the Revolution* 135.

4. Among the more prominent biographers of Henry are William Wirt Henry, *Patrick Henry: Life, Correspondence, and Speeches*, 3 vols. (New York 1891); Robert D. Meade, *Patrick Henry: Patriot in the Making* (Philadelphia 1957), volume one of a projected two-volume biography; Tyler, *Patrick Henry* (see note 2 above); William Wirt, *Sketches of the Life and Character of Patrick Henry* (Philadelphia 1818).

5. Curtis, *Constitutional History* I, 663.

6. *Diary and Autobiography of John Adams*, ed. L. H. Butterfield (1961) II, 125 (6 September 1774). See Farrand I, 166 (8 June).

7. See Tyler, *Patrick Henry* 310–11.

8. Elliot III, 365.

4 June 1788

Mr. Chairman.—The public mind, as well as my own, is extremely uneasy 5.16.1
at the proposed change of Government. Give me leave to form one of that number of those who wish to be thoroughly acquainted with the reasons of this perilious and uneasy situation—and why we are brought hither to decide on this great national question. I consider myself as the servant of the people of this Commonwealth, as a centinel over their rights, liberty, and

happiness. I represent their feelings when I say, that they are exceedingly uneasy, being brought from the state of full security, which they enjoyed, to the present delusive appearance of things. A year ago the minds of our citizens were at perfect repose. Before the meeting of the late Federal Convention at Philadelphia, a general peace, and an universal tranquility prevailed in this country;—but since that period they are exceedingly uneasy and disquieted. When I wished for an appointment to this Convention, my mind was extremely agitated for the situation of public affairs. I conceive the republic to be in extreme danger. If our situation be thus uneasy, whence has arisen this fearful jeopardy? It arises from this fatal system—it arises from the proposal to change our government:—A proposal that goes to the utter annihilation of the most solemn engagements of the States. A proposal of establishing 9 States into a confederacy, to the eventual exclusion of 4 States. It goes to the annihilation of those solemn treaties we have formed with foreign nations. The present circumstances of France—the good offices rendered us by that kingdom, require our most faithful and most punctual adherence to our treaty with her. We are in alliance with the Spaniards, the Dutch, the Prussians: Those treaties bound us as thirteen States, confederated together—Yet, here is a proposal to sever this confederacy. Is it possible that we shall abandon all our treaties and national engagements?—And for what? I expected to have heard the reasons of an event so unexpected to my mind, and many others. Was our civil polity, or public justice, endangered or saped? Was the real existence of the country threatened—or was this preceded by a mournful progression of events? This proposal of altering our Federal Government is of a most alarming nature: Make the best of this new Government—say it is composed by any thing but inspiration—you ought to be extremely cautious, watchful, jealous of your liberty; for instead of securing your rights you may lose them forever. If a wrong step be now made, the Republic may be lost forever. If this new Government will not come up to the expectation of the people, and they should be disappointed—their liberty will be lost, and tyranny must and will arise. I repeat it again, and I beg Gentlemen to consider, that a wrong step made now will plunge us in misery, and our Republic will be lost. It will be necessary for this Convention to have a faithful historical detail of the facts, that preceded the session of the Federal Convention, and the reasons that actuated its members in proposing an entire alteration of Government—and demonstrate the dangers that awaited us: If they were of such awful magnitude, as to warrant a proposal so extremely perilous as this, I must assert, that this Convention has an absolute right to a thorough discovery of every circumstance relative to this great event. And here I would make this enquiry of those worthy characters who composed a part of the late Federal Convention. I am sure they were fully impressed with the necessity of forming a great consolidated Government, instead of a confederation. That this is a consolidated Government is demonstrably clear, and the danger of

such a Government, is, to my mind, very striking. I have the highest veneration of those Gentlemen,—but, Sir, give me leave to demand, what right had they to say, *We, the People*. My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask who authorised them to speak the language of, *We, the People,* instead of *We, the States*? States are the characteristics, and the soul of a confederation.[1] If the States be not the agents of this compact, it must be one great consolidated National Government of the people of all the States. I have the highest respect for those Gentlemen who formed the Convention, and were some of them not here, I would express some testimonial of my esteem for them. America had on a former occasion put the utmost confidence in them: A confidence which was well placed: And I am sure, Sir, I would give up any thing to them; I would chearfully confide in them as my Representatives. But, Sir, on this great occasion, I would demand the cause of their conduct.—Even from that illustrious man, who saved us by his valor, I would have a reason for his conduct—that liberty which he has given us by his valor, tells me to ask this reason,—and sure I am, were he here, he would give us that reason: But there are other Gentlemen here, who can give us this information. The people gave them no power to use their name. That they exceeded their power is perfectly clear. It is not mere curiosity that actuates me—I wish to hear the real actual existing danger, which should lead us to take those steps so dangerous in my conception. Disorders have arisen in other parts of America, but here, Sir, no dangers, no insurrection or tumult, has happened—every thing has been calm and tranquil. But notwithstanding this, we are wandering on the great ocean of human affairs. I see no landmark to guide us. We are running we know not whither. Difference in opinion has gone to a degree of inflammatory resentment in different parts of the country—which has been occasioned by this perilous innovation. The Federal Convention ought to have amended the old system—for this purpose they were solely delegated: The object of their mission extended to no other consideration. You must therefore forgive the solicitation of one unworthy member, to know what danger could have arisen under the present confederation, and what are the causes of this proposal to change our Government.

5 June 1788

Mr. Chairman—I am much obliged to the very worthy Gentleman [Henry Lee] for his encomium. I wish I was possessed of talents, or possessed of any thing, that might enable me to elucidate this great subject. I am not free from suspicion: I am apt to entertain doubts: I rose yesterday to ask a question, which arose in my own mind. When I asked the question, I 5.16.2

thought the meaning of my interrogation was obvious: The fate of this question and America may depend on this: Have they said, we the States? Have they made a proposal of a compact between States? If they had, this would be a confederation: It is otherwise most clearly a consolidated government. The question turns, Sir, on that poor little thing—the expression, *We, the people,* instead of the States of America. I need not take much pains to show, that the principles of this system, are extremely pernicious, impolitic, and dangerous. Is this a Monarchy, like England—a compact between Prince and people; with checks on the former, to secure the liberty of the latter? Is this a Confederacy, like Holland—an association of a number of independent States, each of which retain its individual sovereignty? It is not a democracy, wherein the people retain all their rights securely. Had these principles been adhered to, we should not have been brought to this alarming transition, from a Confederacy to a consolidated Government.[2] We have no detail of those great considerations which, in my opinion, ought to have abounded before we should recur to a government of this kind. Here is a revolution as radical as that which separated us from Great Britain. It is as radical, if in this transition our rights and privileges are endangered, and the sovereignty of the States be relinquished: And cannot we plainly see, that this is actually the case? The rights of conscience, trial by jury, liberty of the press, all your immunities and franchises, all pretensions to human rights and privileges, are rendered insecure, if not lost, by this change so loudly talked of by some, and inconsiderately by others. Is this same relinquishment of rights worthy of freemen? Is it worthy of that manly fortitude that ought to characterize republicans: It is said eight States have adopted this plan. I declare that if twelve States and an half had adopted it, I would with manly firmness, and in spite of an erring world, reject it. You are not to inquire how your trade may be increased, nor how you are to become a great and powerful people, but how your liberties can be secured; for liberty ought to be the direct end of your Government.[3] Having premised these things, I shall, with the aid of my judgment and information, which I confess are not extensive, go into the discussion of this system more minutely. Is it necessary for your liberty, that you should abandon those great rights by the adoption of this system? Is the relinquishment of the trial by jury, and the liberty of the press, necessary for your liberty? Will the abandonment of your most sacred rights tend to the security of your liberty? Liberty the greatest of all earthly blessings—give us that precious jewel, and you may take every thing else: But I am fearful I have lived long enough to become an old fashioned fellow: Perhaps an invincible attachment to the dearest rights of man, may, in these refined enlightened days, be deemed *old fashioned:* If so, I am contended to be so: I say, the time has been, when every pore of my heart beat for American liberty, and which, I believe, had a counterpart in the breast of every true American: But suspicions have gone forth—suspicions of my integrity—publicly reported that my pro-

fessions are not real—23 years ago was I supposed a traitor to my country; I was then said to be a bane of sedition, because I supported the rights of my country: I may be thought suspicious when I say our privileges and rights are in danger: But, Sir, a number of the people of this country are weak enough to think these things are too true: I am happy to find that the Honorable Gentleman on the other side, declares they are groundless: But, Sir, suspicion is a virtue, as long as its object is the preservation of the public good, and as long as it stays within proper bounds: Should it fall on me, I am contented: Conscious rectitude is a powerful consolation: I trust, there are many who think my professions for the public good to be real. Let your suspicion look to both sides: There are many on the other side, who, possibly may have been persuaded of the necessity of these measures, which I conceive to be dangerous to your liberty. Guard with jealous attention the public liberty. Suspect every one who approaches that jewel. Unfortunately, nothing will preserve it, but downright force: Whenever you give up that force, you are inevitably ruined. I am answered by Gentlemen, that though I might speak of terrors, yet the fact was, that we were surrounded by none of the dangers I apprehended. I conceive this new Government to be one of those dangers: It has produced those horrors, which distress many of our best citizens. We are come hither to preserve the poor Commonwealth of Virginia, if it can be possibly done: Something must be done to preserve your liberty and mine: The Confederation; this same despised Government, merits, in my opinion, the highest encomium: It carried us through a long and dangerous war: It rendered us victorious in that bloody conflict with a powerful nation: It has secured us a territory greater than any European Monarch possesses: And shall a Government which has been thus strong and vigorous, be accused of imbecility and abandoned for want of energy?[4] Consider what you are about to do before you part with this Government. Take longer time in reckoning things: Revolutions like this have happened in almost every country in Europe: Similar examples are to be found in ancient Greece and ancient Rome: Instances of the people loosing their liberty by their own carelessness and the ambition of a few. We are cautioned by the Honorable Gentleman who presides, against faction and turbulence: I acknowledge that licentiousness is dangerous, and that it ought to be provided against: I acknowledge also the new form of Government may effectually prevent it: Yet, there is another thing it will as effectually do: it will oppress and ruin the people. There are sufficient guards placed against sedition and licentiousness: For when power is given to this Government to suppress these, or, for any other purpose, the language it assumes is clear, express, and unequivocal, but when this Constitution speaks of privileges, there is an ambiguity, Sir, a fatal ambiguity;—an ambiguity which is very astonishing: In the clause under consideration, there is the strangest that I can conceive. I mean, when it says, that there shall not be more Representatives, than one for every 30,000. Now, Sir, how easy is

it to evade this privilege? "The number shall not exceed one for every 30,000." This may be satisfied by one Representative from each State. Let our numbers be ever so great, this immence continent, may, by this artful expression, be reduced to have but 13 Representatives: I confess this construction is not natural; but the ambiguity of the expression lays a good ground for a quarrel. Why was it not clearly and unequivocally expressed, that they *should* be entitled, to have one for every 30,000? This would have obviated all disputes; and was this difficult to be done? What is the inference? When population increases, and a State shall send Representatives in this proportion, Congress *may* remand them, because the right of having one for every 30,000 is not clearly expressed: This possibility of reducing the number to one for each State, approximates to probability by that other expression, "but each State shall at least have one Representative." Now is it not clear that from the first expression, the number might be reduced so much, that some States should have no Representative at all, were it not for the insertion of this last expression? And as this is the only restriction upon them, we may fairly conclude that they *may* restrain the number to one from each State: Perhaps the same horrors may hang over my mind again. I shall be told I am continually afraid: But, Sir, I have strong cause of apprehension: In some parts of the plan before you, the great rights of freemen are endangered, in other parts absolutely taken away. How does your trial by jury stand? In civil cases gone—not sufficiently secured in criminal—this best privilege is gone: But we are told that we need not fear, because those in power being our Representatives, will not abuse the powers we put in their hands: I am not well versed in history, but I will submit to your recollection, whether liberty has been destroyed most often by the licentiousness of the people, or by the tyranny of rulers? I amagine, Sir, you will find the balance on the side of tyranny:[5] Happy will you be if you miss the fate of those nations, who, omitting to resist their oppressors, or negligently suffering their liberty to be wrested from them, have groaned under intolerable despotism. Most of the human race are now in this deplorable condition: And those nations who have gone in search of grandeur, power and splendor, have also fallen a sacrifice, and been the victims of their own folly: While they acquired those visionary blessings, they lost their freedom. My great objection to this Government is, that it does not leave us the means of defending our rights; or, of waging war against tyrants: It is urged by some Gentlemen, that this new plan will bring us an acquisition of strength, an army, and the militia of the States: This is an idea extremely ridiculous: Gentlemen cannot be in earnest. This acquisition will trample on your fallen liberty: Let my beloved Americans guard against that fatal lethargy that has pervaded the universe: Have we the means of resisting disciplined armies, when our only defence, the militia is put into the hands of Congress? The Honorable Gentleman said, that great danger would ensue if the Convention rose without adopting this system: I ask, where is that danger? I see none:

Other Gentlemen have told us within these walls, that the Union is gone—or, that the Union will be gone: Is not this trifling with the judgment of their fellow-citizens? Till they tell us the ground of their fears, I will consider them as imaginary: I rose to make enquiry where those dangers were; they could make no answer: I believe I never shall have that answer: Is there a disposition in the people of this country to revolt against the dominion of laws? Has there been a single tumult in Virginia? Have not the people of Virginia, when labouring under the severest pressure of accumulated distresses, manifested the most cordial acquiescence in the execution of the laws? What could be more awful than their unamious acquiescence under general distresses? Is there any revolution in Virginia? Whither is the spirit of America gone? Whither is the genius of America fled? It was but yesterday, when our enemies marched in triumph through our country: Yet the people of this country could not be appalled by their pompous armaments: They stopped their career, and victoriously captured them: Where is the peril now compared to that? Some minds are agitated by foreign alarms: Happily for us, there is no real danger from Europe: that country is engaged in more arduous business; from that quarter there is no cause of fear: You may sleep in safety forever for them. Where is the danger? If, Sir, there was any, I would recur to the American spirit to defend us;—that spirit which has enabled us to surmount the greatest difficulties:[6] To that illustrious spirit I address my most fervent prayer, to prevent our adopting a system destructive to liberty. Let not Gentlemen be told, that it is not safe to reject this Government. Wherefore is it not safe? We are told there are dangers; but those dangers are ideal; they cannot be demonstrated: To encourage us to adopt it, they tell us, that there is a plain easy way of getting amendments: When I come to contemplate this part, I suppose that I am mad, or, that my countrymen are so: The way to amendment, is, in my conception, shut. Let us consider this plain easy way: "The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress. Provided, that no amendment which may be made prior to the year 1808, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate." Hence it appears that three-fourths of the States must ultimately agree to any amendments that may be necessary. Let us consider the consequences of this: However uncharitable it may appear, yet I must tell my opinion, that the most unworthy characters may get into power and prevent the introduction of amendments: Let us suppose (for the case is

supposeable, possible, and probable) that you happen to deal these powers to unworthy hands; will they relinquish powers already in their possession, or, agree to amendments? Two-thirds of the Congress, or, of the State Legislatures, are necessary even to propose amendments: If one-third of these be unworthy men, they may prevent the application for amendments; but what is destructive and mischievous is, that three-fourths of the State Legislatures, or of State Conventions, must concur in the amendments when proposed: In such numerous bodies, there must necessarily be some designing bad men: To suppose that so large a number as three-fourths of the States will concur, is to suppose that they will possess genius, intelligence, and integrity, approaching to miraculous. It would indeed be miraculous that they should concur in the same amendments, or, even in such as would bear some likeness to one another. For four of the smallest States, that do not collectively contain one-tenth part of the population of the United States, may obstruct the most salutary and necessary amendments: Nay, in these four States, six tenths of the people may reject these amendments; and suppose, that amendments shall be opposed to amendments (which is highly probable) is it possible, that three-fourths can ever agree to the same amendments? A bare majority in these four small States may hinder the adoption of amendments; so that we may fairly and justly conclude, that one-twentieth part of the American people, may prevent the removal of the most grievous inconveniences and oppression, by refusing to accede to amendments. A trifling minority may reject the most salutary amendments. Is this an easy mode of securing the public liberty? It is, Sir, a most fearful situation, when the most contemptible minority can prevent the alteration of the most oppressive Government; for it may in many respects prove to be such: Is this the spirit of republicanism? What, Sir, is the genius of democracy? Let me read that clause of the Bill of Rights of Virginia, which relates to this: 3d cl. "That Government is or ought to be instituted for the common benefit, protection, and security of the people, nation, or community: Of all the various modes and forms of Government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of mal-administration, and *that whenever any Government shall be found inadequate, or contrary to these purposes, a majority of the community hath, an undubitable, unalienable and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.*"[7] This, Sir, is the language of democracy; that a majority of the community have a right to alter their Government when found to be oppressive: But how different is the genius of your new Constitution from this? How different from the sentiments of freemen, that a contemptible minority can prevent the good of the majority? If then Gentlemen standing on this ground, are come to that point, that they are willing to bind themselves and their posterity to be oppressed, I am amazed and inexpressibly astonished. If this be the opinion

of the majority, I must submit; but to me, Sir, it appears perilous and destructive: I cannot help thinking so: Perhaps it may be the result of my age; these may be feelings natural to a man of my years, when the American spirit has left him, and his mental powers, like the members of the body, are decayed. If, Sir, amendments are left to the twentieth or the tenth part of the people of America, your liberty is gone forever. We have heard that there is a great deal of bribery practiced in the House of Commons in England; and that many of the members raised themselves to preferments, by selling the rights of the people: But, Sir, the tenth part of that body cannot continue oppressions on the rest of the people. English liberty is in this case, on a firmer foundation than American liberty. It will be easily contrived to procure the opposition of one tenth of the people to any alteration, however judicious. The Honorable Gentleman who presides, told us, that to prevent abuses in our Government, we will assemble in Convention, recall our delegated powers, and punish our servants for abusing the trust reposed in them.[8] Oh, Sir, we should have fine times indeed, if to punish tyrants, it were only sufficient to assemble the people. Your arms wherewith you could defend yourselves, are gone; and have no longer a aristocratical; no longer democratical spirit. Did you ever read of any revolution in any nation, brought about by the punishment of those in power, inflicted by those who had no power at all? You read of a riot act in a country which is called one of the freest in the world, where a few neighbours cannot assemble without the risk of being shot by a hired soldiery, the engines of despotism. We may see such an act in America. A standing army we shall have also, to execute the execrable commands of tyranny: And how are you to punish them? Will you order them to be punished? Who shall obey these orders? Will your Mace-bearer be a match for a disciplined regiment? In what situation are we to be? The clause before you gives a power of direct taxation, unbounded and unlimitted: Exclusive power of Legislation in all cases whatsoever, for ten miles square; and over all places purchased for the erection of forts, magazines, arsenals, dock-yards, &c. What resistance could be made? The attempt would be madness. You will find all the strength of this country in the hands of your enemies: Those garrisons will naturally be the strongest places in the country. Your militia is given up to Congress also in another part of this plan: They will therefore act as they think proper: All power will be in their own possession: You cannot force them to receive their punishment: Of what service would militia be to you, when most probably you will not have a single musket in the State; for as arms are to be provided by Congress, they may or may not furnish them. Let me here call your attention to that part which gives the Congress power, "To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia, according to the discipline pre-

scribed by Congress." By this, Sir, you see that their controul over our last and best defence, is unlimitted. If they neglect or refuse to discipline or arm our militia, they will be useless: The States can do neither, this power being exclusively given to Congress: The power of appointing officers over men not disciplined or armed, is ridiculous: So that this pretended little remains of power left to the States, may, at the pleasure of Congress, be rendered nugatory. Our situation will be deplorable indeed: Nor can we ever expect to get this government amended, since I have already shewn, that a very small minority may prevent it; and that small minority interested in the continuance of the oppression: Will the oppressor let go the oppressed? Was there ever an instance? Can the annals of mankind exhibit one single example, where rulers overcharged with power, willingly let go the oppressed, though solicited and requested most earnestly? The application for amendments will therefore be fruitless. Sometimes the oppressed have got loose by one of those bloody struggles that desolate a country. A willing relinquishment of power is one of those things which human nature never was, nor ever will be capable of: The Honorable Gentleman's observations respecting the people's right of being the agents in the formation of this Government, are not accurate in my humble conception.[9] The distinction between a National Government and a Confederacy is not sufficiently discerned. Had the delegates who were sent to Philadelphia a power to propose a Consolidated Government instead of a Confederacy? Were they not deputed by States, and not by the people? The assent of the people in their collective capacity is not necessary to the formation of a Federal Government. The people have no right to enter into leagues, alliances, or confederations: They are not the proper agents for this purpose: States and sovereign powers are the only proper agents for this kind of Government: Shew me an instance where the people have exercised this business: Has it not always gone through the Legislatures? I refer you to the treaties with France, Holland, and other nations: How were they made? Were they not made by the States? Are the people therefore in their aggregate capacity, the proper persons to form a Confederacy? This, therefore, ought to depend on the consent of the Legislatures; the people having never sent delegates to make any proposition of changing the Government. Yet I must say, at the same time, that it was made on grounds the most pure, and perhaps I might have been brought to consent to it so far as to the change of Government: but there is one thing in it which I never would acquiesce in. I mean the changing it into a Consolidated Government; which is so abhorent to my mind. The Honorable Gentleman then went on to the figure we make with foreign nations; the contemptible one we make in France and Holland; which, according to the system of my notes, he attributes to the present feeble Government.[10] An opinion has gone forth, we find, that we are a contemptible people: The time has been when we were thought otherwise: Under this same despised Government, we commanded the respect of all

Europe: Wherefore are we now reckoned otherwise? The American spirit has fled from hence: It has gone to regions, where it has never been expected: It has gone to the people of France in search of a splendid Government—a strong energetic Government. Shall we imitate the example of those nations who have gone from a simple to a splendid Government. Are those nations more worthy of our imitation? What can make an adequate satisfaction to them for the loss they suffered in attaining such a Government for the loss of their liberty? If we admit this Consolidated Government it will be because we like a great splendid one. Some way or other we must be a great and mighty empire; we must have an army, and a navy, and a number of things: When the American spirit was in its youth, the language of America was different: Liberty, Sir, was then the primary object. We are descended from a people whose Government was founded on liberty: Our glorious forefathers of Great-Britain, made liberty the foundation of every thing. That country is become a great, mighty, and splendid nation; not because their Government is strong and energetic; but, Sir, because liberty is its direct end and foundation: We drew the spirit of liberty from our British ancestors; by that spirit we have triumphed over every difficulty: But now, Sir, the American spirit, assisted by the ropes and chains of consolidation, is about to convert this country to a powerful and mighty empire: If you make the citizens of this country agree to become the subjects of one great consolidated empire of America, your Government will not have sufficent energy to keep them together: Such a Government is incompatible with the genius of republicanism: There will be no checks, no real balances, in this Government: What can avail your specious imaginary balances, your rope-dancing, chain-rattling, ridiculous ideal checks and contrivances? But, Sir, we are not feared by foreigners: we do not make nations tremble: Would this, Sir, constitute happiness, or secure liberty?[11] I trust, Sir, our political hemisphere will ever direct their operations to the security of those objects. Consider our situation, Sir: Go to the poor man, ask him what he does; he will inform you, that he enjoys the fruits of his labour, under his own fig-tree, with his wife and children around him, in peace and security. Go to every other member of the society, you will find the same tranquil ease and content; you will find no alarms or disturbances: Why then tell us of dangers to terrify us into an adoption of this new Government? and yet who knows the dangers that this new system may produce; they are out of the sight of the common people: They cannot foresee latent consequences: I dread the operation of it on the middling and lower class of people: It is for them I fear the adoption of this system. I fear I tire the patience of the Committee, but I beg to be indulged with a few more observations: When I thus profess myself an advocate for the liberty of the people, I shall be told, I am a designing man, that I am to be a great man, that I am to be a demagogue; and many similar illiberal insinuations will be thrown out; but, Sir, conscious rectitude, out-weighs these things with me: I

see great jeopardy in this new Government. I see none from our present one: I hope some Gentleman or other will bring forth, in full array, those dangers, if there be any, that we may see and touch them.

5.16.3 {[7 June] I have thought, and still think, that a full investigation of the actual situation of America, ought to precede any decision on this great and important question. That Government is no more than a choice among evils, is acknowledged by the most intelligent among mankind, and has been a standing maxim for ages. If it be demonstrated that the adoption of the new plan is a little or a trifling evil, then, Sir, I acknowledge that adoption ought to follow: But, Sir, if this be a truth that its adoption may entail misery on the free people of this country, I then insist, that rejection ought to follow. Gentlemen strongly urge its adoption will be a mighty benefit to us: But, Sir, I am made of such incredulous materials that assertions and declarations, do not satisfy me. I must be convinced, Sir. I shall retain my infidelity on that subject, till I see our liberties secured in a manner perfectly satisfactory to my understanding. . . .

5.16.4 { . . . You are told [by Governor Randolph] there is no peace,[12] although you fondly flatter yourselves that all is peace—No peace—a general cry and alarm in the country—Commerce, riches, and wealth vanished—Citizens going to seek comforts in other parts of the world—Laws insulted—Many instances of tyrannical legislation. These things, Sir, are new to me. He has made the discovery—As to the administration of justice, I believe that failures in commerce, &c. cannot be attributed to it. My age enables me to recollect its progress under the old Government. I can justify it by saying, that it continues in the same manner in this State, as it did under former Government. As to other parts of the Continent, I refer that to other Gentlemen. As to the ability of those who administer it, I believe they would not suffer by a comparison with those who administered it under the royal authority. Where is the cause of complaint if the wealthy go away? Is this added to the other circumstances, of such enormity, and does it bring such danger over this Commonwealth as to warrant so important, and so awful a change in so precipitate a manner? As to insults offered to the laws, I know of none. In this respect I believe this Commonwealth would not suffer by a comparison with the former Government. The laws are as well executed, and as patiently acquiesced in, as they were under the royal administration. Compare the situation of the country—Compare that of our citizens to what they were then, and decide whether persons and property are not as safe and secure as they were at that time. Is there a man in this Commonwealth, whose person can be insulted with impunity? Cannot redress be had here for personal insults or injuries, as well as in any part of the world—as well as in those countries where Aristocrats and Monarchs triumph and reign? Is not the protection of property in full operation here? The contrary cannot with truth be charged on this Commonwealth. Those severe charges which are exhibited against it, appear to me totally groundless. On a fair investigation,

we shall be found to be surrounded by no real dangers. We have the animating fortitude and persevering alacrity of republican men, to carry us through misfortunes and calamities. 'Tis the fortune of a republic to be able to withstand the stormy ocean of human vicissitudes. I know of no danger awaiting us. Public and private security are to be found here in the highest degree. Sir, it is the fortune of a free people, not to be intimidated by imaginary dangers. Fear is the passion of slaves. Our political and natural hemisphere are now equally tranquil. Let us recollect the awful magnitude of the subject of our deliberation. Let us consider the latent consequences of an erroneous decision—and let not our minds be led away by unfair misrepresentations and uncandid suggestions. There have been many instances of uncommon lenity and temperance used in the exercise of power in this Commonwealth. I could call your recollection to many that happened during the war and since—But every Gentleman here must be apprized of them.

{The Honorable member has given you an elaborate account of what he judges tyrannical legislation, and an *ex post facto law* (in the case of Josiah Philips.)[13] He has misrepresented the facts. That man was not executed by a tyrannical stroke of power. He was a fugitive murderer and an out-law—a man who commanded an infamous banditti, at a time when the war was at the most perilous stage. He committed the most cruel and shocking barbarities. He was an enemy to the human name.—Those who declare war against the human race, may be struck out of existence as soon as they are apprehended. He was not executed according to those beautiful legal ceremonies which are pointed out by the laws, in criminal cases. The enormity of his crimes did not entitle him to it. I am truly a friend to legal forms and methods; but, Sir, the occasion warranted the measure. A pirate, an outlaw, or a common enemy to all mankind, may be put to death at any time. It is justified by the laws of nature and nations. The Honorable member tells us then, that there are burnings and discontents in the hearts of our citizens in general, and that they are dissatisfied with their Government.[14] I have no doubt the Honorable member believes this to be the case, because he says so. But I have the comfortable assurance, that it is a certain fact, *that it is not so*. The middle and lower ranks of people have not those illumined ideas, which the well-born are so happily possessed of—They cannot so readily perceive latent objects. The microscopic eyes of modern States-men can see abundance of defects in old systems; and their illumined imaginations discover the necessity of change.} 5.16.5

. . . I have said that I thought this a Consolidated Government: I will now prove it. Will the great rights of the people be secured by this Government? Suppose it should prove oppressive, how can it be altered? Our Bill of Rights declares, "That a majority of the community hath an *undubitable, unalienable,* and *indefeasible right* to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal."[15] I have just proved that one tenth, or less, of the people of America, a most despicable 5.16.6

minority may prevent this reform or alteration. Suppose the people of Virginia should wish to alter their Government, can a majority of them do it? No, because they are connected with other men; or, in other words, consolidated with other States: When the people of Virginia at a future day shall wish to alter their Government, though they should be unanimous in this desire, yet they may be prevented therefrom by a despicable minority at the extremity of the United States: The founders of your own Constitution made your Government changeable: But the power of changing it is gone from you! Whither is it gone? It is placed in the same hands that hold the rights of twelve other States; and those who hold those rights, have right and power to keep them: It is not the particular Government of Virginia: One of the leading features of that Government is, that a majority can alter it, when necessary for the public good. This Government is not a Virginian but an American Government. Is it not therefore a Consolidated Government? The sixth clause of your Bill of Rights tells you, "That elections of members to serve as Representatives of the people in Assembly, ought to be free, and that all men having sufficient evidence of permanent common interest with, and attachment to the community, have the right of suffrage, and *cannot* be *taxed* or *deprived* of *their property* for public uses, without their own consent, or that of their Representatives so elected, nor bound by any law to which they have not in like manner assented for the public good."[16] But what does this Constitution say? The clause under consideration gives an unlimitted and unbounded power of taxation: Suppose every delegate from Virginia opposes a law laying a tax, what will it avail? They are opposed by a majority: Eleven members can destroy their efforts: Those feeble ten cannot prevent the passing the most oppressive tax law. So that in direct opposition to the spirit and express language of your Declaration of Rights, you are taxed not by your own consent, but by people who have no connection with you. The next clause of the Bill of Rights tells you, "That all power of suspending law, or the execution of laws, by any authority without the consent of the Representatives of the people, is injurious to their rights, and ought not to be exercised."[17] This tells us that there can be no suspension of Government, or laws without our own consent: Yet this Constitution can counteract and suspend any of our laws, that contravene its oppressive operation; for they have the power of direct taxation; which suspends our Bill of Rights; and it is expressly provided, that they can make all laws necessary for carrying their powers into execution; and it is declared paramount to the laws and constitutions of the States. Consider how the only remaining defence we have left is destroyed in this manner: Besides the expences of maintaining the Senate and other House in as much splendor as they please, there is to be a great and mighty President, with very extensive powers; the powers of a King: He is to be supported in extravagant magnificence: So that the whole of our property may be taken by this American Government, by laying what taxes they please, giving themselves

what salaries they please, and suspending our laws at their pleasure: I might be thought too inquisitive, but I believe I should take up but very little of your time in enumerating the little power that is left to the Government of Virginia; for this power is reduced to little or nothing: Their garrisons, magazines, arsenals, and forts, which will be situated in the strongest places within the States: Their ten miles square, with all the fine ornaments of human life, added to their powers, and taken from the States, will reduce the power of the latter to nothing. The voice of tradition, I trust, will inform posterity of our struggles for freedom: If our descendants be worthy the name of Americans, they will preserve and hand down to their latest posterity, the transactions of the present times; and though, I confess, my exclamations are not worthy the hearing, they will see that I have done my utmost to preserve their liberty: For I never will give up the power of direct taxation, but for a scourge: I am willing to give it conditionally; that is, after non-compliance with requisitions: I will do more, Sir, and what I hope will convince the most sceptical man, that I am a lover of the American Union, that in case Virginia shall not make punctual payment, the controul of our custom houses, and the whole regulation of trade, shall be given to Congress, and that Virginia shall depend on Congress even for passports, till Virginia shall have paid the last farthing; and furnished the last soldier: Nay, Sir, there is another alternative to which I would consent: Even that they should strike us out of the Union, and take away from us all federal privileges till we comply with federal requisitions; but let it depend upon our own pleasure to pay our money in the most easy manner for our people. Were all the States, more terrible than the mother country, to join against us, I hope Virginia could defend herself; but, Sir, the dissolution of the Union is most abhorent to my mind: The first thing I have at heart is American *liberty;* the second thing is American Union;[18] and I hope the people of Virginia will endeavor to preserve that Union: The increasing population of the southern States, is far greater than that of New-England: Consequently, in a short time, they will be far more numerous than the people of that country: Consider this, and you will find this State more particularly interested to support American liberty, and not bind our posterity by an improvident relinquishment of our rights. I would give the best security for a punctual compliance with requisitions; but I beseech Gentlemen, at all hazards, not to give up this unlimitted power of taxation: The Honorable Gentleman has told us these powers given to Congress, are accompanied by a Judiciary which will connect all:[19] On examination you will find this very Judiciary oppressively constructed; your jury trial destroyed, and the Judges dependent on Congress. In this scheme of energetic Government, the people will find two sets of tax-gatherers—the State and the Federal Sheriffs. This it seems to me will produce such dreadful oppression, as the people cannot possibly bear: The Federal Sheriff may commit what oppression, make what distresses he pleases, and ruin you with im-

punity: For how are you to tie his hands? Have you any sufficient decided means of preventing him from sucking your blood by speculations, commissions and fees? Thus thousands of your people will be most shamefully robbed: Our State Sheriffs, those unfeeling blood-suckers, have, under the watchful eye of our Legislature, committed the most horrid and barbarous ravages on our people: It has required the most constant vigilance of the Legislature to keep them from totally ruining the people: A repeated succession of laws has been made to suppress their inequitous speculations and cruel extortions; and as often have their nefarious ingenuity devised methods of evading the force of those laws: In the struggle they have generally triumphed over the Legislature. It is fact that lands have sold for five shillings, which were worth one hundred pounds: If Sheriffs thus immediately under the eye of our State Legislature and Judiciary, have dared to commit these outrages, what would they not have done if their masters had been at Philadelphia or New-York? If they perpetrate the most unwarrantable outrage on your persons or property, you cannot get redress on this side of Philadelphia or New-York: And how can you get it there? If your domestic avocations could permit you to go thither, there you must appeal to Judges sworn to support this Constitution, in opposition to that of any State, and who may also be inclined to favor their own officers: When these harpies are aided by excise men, who may search at any time your houses and most secret recesses, will the people bear it? If you think so you differ from me: Where I thought there was a possibility of such mischiefs, I would grant power with a niggardly hand; and here there is strong probability that these oppressions shall actually happen. I may be told, that it is safe to err on that side; because such regulations *may* be made by Congress, as shall restrain these officers, and because laws are made by our Representatives, and judged by righteous Judges: But, Sir, as these regulations may be made, so they may not; and many reasons there are to induce a belief that they will not: I shall therefore be an infidel on that point till the day of my death.

5.16.7 This Constitution is said to have beautiful features; but when I come to examine these features, Sir, they appear to me horridly frightful: Among other deformities, it has an awful squinting; it squints towards monarchy: And does not this raise indignation in the breast of every American? Your President may easily become King: Your Senate is so imperfectly constructed that your dearest rights may be sacrificed by what may be a small minority; and a very small minority may continue forever unchangeably this Government, although horridly defective: Where are your checks in this Government? Your strong holds will be in the hands of your enemies: It is on a supposition that our American Governors shall be honest, that all the good qualities of this Government are founded: But its defective, and imperfect construction, puts it in their power to perpetrate the worst of mischiefs, should they be bad men: And, Sir, would not all the world, from the Eastern to the Western hemisphere, blame our distracted folly in resting our

rights upon the contingency of our rulers being good or bad. Shew me that age and country where the rights and liberties of the people were placed on the sole chance of their rulers being good men, without a consequent loss of liberty? I say that the loss of that dearest privilege has ever followed with absolute certainty, every such mad attempt. If your American chief, be a man of ambition, and abilities, how easy is it for him to render himself absolute: The army is in his hands, and, if he be a man of address, it will be attached to him; and it will be the subject of long meditation with him to seize the first auspicious moment to accomplish his design; and, Sir, will the American spirit solely relieve you when this happens? I would rather infinitely, and I am sure most of this Convention are of the same opinion, have a King, Lords, and Commons, than a Government so replete with such insupportable evils. If we make a King, we may prescribe the rules by which he shall rule his people, and interpose such checks as shall prevent him from infringing them: But the President, in the field, at the head of his army, can prescribe the terms on which he shall reign master, so far that it will puzzle any American ever to get his neck from under the galling yoke. I cannot with patience, think of this idea. If ever he violates the laws, one of two things will happen: He shall come to the head of his army to carry every thing before him; or, he will give bail, or do what Mr. Chief Justice will order him. If he be guilty, will not the recollection of his crimes teach him to make one bold push for the American throne? Will not the immense difference between being master of every thing, and being ignominiously tried and punished, powerfully excite him to make this bold push? But, Sir, where is the existing force to punish him? Can he not at the head of his army beat down every opposition? Away with your President, we shall have a King: The army will salute him Monarch; your militia will leave you and assist in making him King, and fight against you: And what have you to oppose this force? What will then become of you and your rights? Will not absolute despotism ensue? [Here Mr. Henry strongly and pathetically expatiated on the probability of the President's enslaving America and the horrible consequences that must result.]

What[20] can be more defective than the clause concerning the elections?—The controul given to Congress over the time, place, and manner of holding elections, will totally destroy the end of suffrage. The elections may be held at one place, and the most inconvenient in the State; or they may be at remote distances from those who have a right of suffrage: Hence nine out of ten must either not vote at all, or vote for strangers: For the most influential characters will be applied to, to know who are the most proper to be chosen. I repeat that the controul of Congress over the *manner*, &c. of electing, well warrants this idea. The natural consequence will be, that this democratic branch, will possess none of the public confidence: The people will be prejudiced against Representatives chosen in such an injudicious manner. The proceedings in the northern conclave will be hidden from 5.16.8

the yeomanry of this country: We are told that the yeas and nays shall be taken and entered on the journals: This, Sir, will avail nothing: It may be locked up in their chests, and concealed forever from the people; for they are not to publish what parts they think require secrecy: They *may* think, and *will think,* the whole requires it. Another beautiful feature of this Constitution is the publication from time to time of the receipts and expenditures of the public money. This expression, from time to time, is very indefinite and indeterminate: It may extend to a century. Grant that any of them are wicked, they may squander the public money so as to ruin you, and yet this expression will give you no redress. I say, they may ruin you;—for where, Sir, is the responsibility? The yeas and nays will shew you nothing, unless they be fools as well as knaves: For after having wickedly trampled on the rights of the people, they would act like fools indeed, were they to publish and devulge their iniquity, when they have it equally in their power to suppress and conceal it.—Where is the responsibility—that leading principle in the British government? In that government a punishment, certain and inevitable, is provided: But in this, there is no real actual punishment for the grossest maladministration. They may go without punishment, though they commit the most outrageous violation on our immunities. That paper may tell me they will be punished. I ask, by what law? They must make the law—for there is no existing law to do it. What—will they make a law to punish themselves? This, Sir, is my great objection to the Constitution. that there is no true responsibility—and that the preservation of our liberty depends on the single chance of men being virtuous enough to make laws to punish themselves.[21] In the country from which we are descended, they have real, and not imaginary, responsibility—for there, maladministration has cost their heads, to some of the most saucy geniuses that ever were. The Senate, by making treaties may destroy your liberty and laws for want of responsibility. Two-thirds of those that shall happen to be present, can, with the President, make treaties, that shall be the supreme law of the land: They may make the most ruinous treaties; and yet there is no punishment for them. Whoever shews me a punishment provided for them, will oblige me. So, Sir, notwithstanding there are eight pillars, they want another. Where will they make another? I trust, Sir, the exclusion of the evils wherewith this system is replete, in its present form, will be made a condition, precedent to its adoption, by this or any other State. The transition from a general unqualified admission to offices, to a consolidation of government, seems easy; for though the American States are dissimilar in their structure, this will assimilate them: This, Sir, is itself a strong consolidating feature, and is not one of the least dangerous in that system. Nine States are sufficient to establish this government over those nine: Imagine that nine have come into it. Virginia has certain scruples. Suppose she will consequently, refuse to join with those States:—May not they still continue in friendship and union with her? If she sends her annual requisitions in dollars, do you think their

stomachs will be so squeamish that they will refuse her dollars? Will they not accept her regiments? They would intimidate you into an inconsiderate adoption, and frighten you with ideal evils, and that the Union shall be dissolved. 'Tis a bugbear, Sir:—The fact is, Sir, that the eight adopting States can hardly stand on their own legs. Public fame tells us, that the adopting States have already heart-burnings and animosity, and repent their precipitate hurry: This, Sir, may occasion exceeding great mischief. When I reflect on these and many other circumstances, I must think those States will be fond to be in confederacy with us. If we pay our quota of money annually, and furnish our rateable number of men, when necessary, I can see no danger from a rejection. The history of Switzerland clearly proves, we might be in amicable alliance with those States without adopting this Constitution. Switzerland is a Confederacy, consisting of dissimilar Governments. This is an example which proves that Governments of dissimilar structure may be Confederated; that Confederate Republic has stood upwards of 400 years; and although several of the individual republics are democratic, and the rest aristocratic, no evil has resulted from this dissimilarity, for they have braved all the power of France and Germany during that long period. The Swiss spirit, Sir, has kept them together: They have encountered and overcome immense difficulties with patience and fortitude. In this vicinity of powerful and ambitious monarchs, they have retained their independence, republican simplicity and valour. [Here he makes a comparison of the people of that country, and those of France, and makes a quotation from Addison, illustrating the subject.] Look at the peasants of that country and of France, and mark the difference. You will find the condition of the former far more desirable and comfortable. No matter whether a people be great, splendid, and powerful, if they enjoy freedom. The Turkish Grand Seignior, along-side of our President, would put us to disgrace: But we should be abundantly consoled for this disgrace, when our citizen should be put in contrast with the Turkish slave. The most valuable end of government, is the liberty of the inhabitants. No possible advantages can compensate for the loss of this privilege. Shew me the reason why the American Union is to be dissolved. Who are those eight adopting States? Are they averse to give us a little time to consider, before we conclude? Would such a disposition render a junction with them eligible; or is it the genius of that kind of government, to precipitate people hastily into measures of the utmost importance, and grant no indulgence? If it be, Sir, is it for us to accede to such a government? We have a right to have time to consider—We shall therefore insist upon it. Unless the government be amended, we can never accept it. The adopting States will doubtless accept our money and our regiments—And what is to be the consequence, if we are disunited? I believe that it is yet doubtful, whether it is not proper to stand by a while, and see the effect of its adoption in other States. In forming a government, the utmost care should be taken to prevent its becoming op-

pressive; and this government is of such an intricate and complicated nature, that no man on this earth can know its real operation. The other States have no reason to think, from the antecedent conduct of Virginia, that she has any intention of seceding from the Union, or of being less active to support the general welfare: Would they not therefore acquiesce in our taking time to deliberate? Deliberate whether the measure be not perilous, not only for us, but the adopting States. Permit me, Sir, to say, that a great majority of the people even in the adopting States, are averse to this government. I believe I would be right to say, that they have been egregiously misled. Pennsylvania has *perhaps* been tricked into it. If the other States who have adopted it, have not been tricked, still they were too much hurried into its adoption. There were very respectable minorities in several of them; and if reports be true, a clear majority of the people are averse to it. If we also accede, and it should prove grievous, the peace and prosperity of our country, which we all love, will be destroyed. This government has not the affection of the people, at present. Should it be oppressive, their affection will be totally estranged from it—and, Sir, you know that a Government without their affections can neither be durable nor happy. I speak as one poor individual—but when I speak, I speak the language of thousands. But, Sir, I mean not to breath the spirit nor utter the language of secession. I have trespassed so long on your patience, I am really concerned that I have something yet to say. The honorable member has said that we shall be properly represented: Remember, Sir, that the number of our Representatives is but ten, whereof six is a majority. Will these men be possessed of sufficient information? A particular knowledge of particular districts will not suffice. They must be well acquainted with agriculture, commerce, and a great variety of other matters throughout the Continent: They must know not only the actual state of nations in Europe, and America, the situation of their farmers, cottagers, and mechanics, but also the relative situation and intercourse of those nations. Virginia is as large as England. Our proportion of Representatives is but ten men. In England they have 530. The House of Commons in England, numerous as they are, we are told, is bribed, and have bartered away the rights of their constituents: What then shall become of us? Will these few protect our rights? Will they be incorruptible? You say they will be better men than the English Commoners. I say they will be infinitely worse men, because they are to be chosen blindfolded: Their election (the term, as applied to their appointment, is inaccurate) will be an involuntary nomination, and not a choice. I have, I fear, fatigued the Committee, yet I have not said the one hundred thousandeth part of what I have on my mind, and wish to impart. On this occasion I conceived myself bound to attend strictly to the interest of the State; and I thought her dearest rights at stake: Having lived so long—been so much honored—my efforts, though small, are due to my country. I have found my mind hurried on from subject to subject, on this very great occasion. We have been all out of order from

the Gentleman who opened to-day, to myself. I did not come prepared to speak on so multifarious a subject, in so general a manner. I trust you will indulge me another time.—Before you abandon the present system, I hope you will consider not only its defects, most maturely, but likewise those of that which you are to substitute to it. May you be fully apprised of the dangers of the latter, not by fatal experience, but by some abler advocate than me.

9 June 1788

. . . A number of characters of the greatest eminence in this country, object to this Government, for its consolidating tendency. This is not imaginary. It is a formidable reality. If consolidation proves to be as mischievous to this country, as it has been to other countries, what will the poor inhabitants of this country do? This Government will operate like an ambuscade. It will destroy the State Governments, and swallow the liberties of the people, without giving them previous notice. If Gentlemen are willing to run the hazard, let them run it; but I shall exculpate myself by my opposition, and monitory warnings within these walls. But, then comes paper money. We are at peace on this subject. Though this is a thing which that mighty Federal Convention had no business with, yet I acknowledge that paper money would be the bane of this country. I detest it. Nothing can justify a people in resorting to it, but extreme necessity. It is at rest however in this Commonwealth. It is no longer solicited or advocated. Sir, I ask you, and every other Gentleman who hears me, if he can retain his indignation, at a system, which takes from the State Legislatures the care and preservation of the interests of the people; 180 Representatives, the choice of the people of Virginia cannot be trusted with their interests. They are a mobbish suspected *herd*.[22] This country has not virtue enough to manage its own internal interests. These must be referred to the chosen few. If we cannot be trusted with the private contracts of the citizens, we must be depraved indeed. If he can prove that by one uniform system of abandoned principles, the Legislature has betrayed the rights of the people, then let us seek another shelter. So degrading an indignity—so flagrant an out-rage to the States—so vile a suspicion is humiliating to my mind, and many others. 5.16.9

Will the adoption of this new plan pay our debts? This, Sir, is a plain question. It is inferred, that our grievances are to be redressed, and the evils of the existing system to be removed by the new Constitution. Let me inform the Honorable Gentleman, that no nation ever paid its debts by a change of Government, without the aid of industry. You never will pay your debts but by a radical change of domestic œconomy. At present you buy too much, and make too little to pay. Will this new system promote manufac- 5.16.10

tures, industry and frugality? If instead of this, your hopes and designs will be disappointed; you relinquish a great deal, and hazard infinitely more, for nothing. Will it enhance the value of your lands? Will it lessen your burthens? Will your looms and wheels go to work by the act of adoption? If it will in its consequence produce these things, it will consequently produce a reform, and enable you to pay your debts. Gentlemen must prove it. I am a sceptic—an infidel on this point. I cannot conceive that it will have these happy consequences. I cannot confide in assertions and allegations. The evils that attend us, lie in extravagance and want of industry, and can only be removed by assiduity and œconomy. Perhaps we shall be told by Gentlemen, that these things will happen, because the administration is to be taken from us, and placed in the hands of the luminous few, who will pay different attention, and be more studiously careful than we can be supposed to be.[23] . . .

5.16.11 . . . This Government is so new it wants a name. I wish its other novelties were as harmless as this. He told us, we had an American Dictator in the year 1781[24]—We never had an American President. In making a Dictator, we follow the example of the most glorious, magnanimous and skilful nations. In great dangers this power has been given.—Rome had furnished us with an illustrious example.—America found a person worthy of that trust: She looked to Virginia for him. We gave a dictatorial power to hands that used it gloriously; and which were rendered more glorious by surrendering it up. Where is there a breed of such Dictators? Shall we find a set of American Presidents of such a breed? Will the American President come and lay prostrate at the feet of Congress his laurels? I fear there are few men who can be trusted on that head. The glorious republic of Holland has erected monuments of her warlike intrepidity and valor: Yet she is now totally ruined by a Stadtholder—a Dutch President. The destructive wars into which that nation has been plunged, has since involved her in ambition. The glorious triumphs of Blenheim and Ramillies were not so conformable to the genius, nor so much to the true interest of the republic, as those numerous and useful canals and dykes, and other objects at which ambition spurns. That republic has, however, by the industry of its inhabitants, and policy of its magistrates, suppressed the ill effects of ambition.—Notwithstanding two of their provinces have paid nothing, yet I hope the example of Holland will tell us, that we can live happily without changing our present despised Government. Cannot people be as happy under a mild, as under an energetic Government? Cannot content and felicity be enjoyed in a republic, as well as in a monarchy, because there are whips, chains and scourges used in the latter? If I am not as rich as my neighbour, if I give my mite—my all—republican forbearance will say, that it is sufficient—So said the honest confederates of Holland.—*You are poor—We are rich.—We will go on and do better, far better, than be under an oppressive Government.* —For better will it be for us to continue as we are, than go under that tight energetic

Government.—I am persuaded of what the Honorable Gentleman says, that separate confederacies will ruin us.[25] In my judgment, they are evils never to be thought of till a people are driven by necessity.—When he asks my opinion of consolidation—of one power to reign over America, with a strong hand; I will tell him, I am persuaded, of the rectitude of my honorable friend's opinion (Mr. *Mason*) that one Government cannot reign over so extensive a country as this is, without absolute despotism.[26] Compared to such a consolidation, small Confederacies are little evils; though they ought to be recurred to, but in case of necessity.—Virginia and North-Carolina are despised. They could exist separated from the rest of America. Maryland and Vermont were not over-run when out of the Confederacy. Though it is not a desirable object, yet I trust, that on examination it will be found, that Virginia and North-Carolina would not be swallowed up in case it was necessary for them to be joined together.

When we come to the spirit of domestic peace—The humble genius of Virginia has formed a Government, suitable to the genius of her people. I believe the hands that formed the American Constitution triumph in the experiment. It proves, that the man who formed it, and perhaps by accident, did what design could not do in other parts of the world. After all your reforms in Government, unless you consult the genius of the inhabitants, you will never succeed—your system can have no duration. Let me appeal to the candour of the Committee, if the want of money be not the source of all our misfortunes. We cannot be blamed for not making dollars. This want of money cannot be supplied by changes in Government. The only possible remedy, as I *have before* asserted, is industry aided by œconomy.[27] Compare the genius of the people with the Government of this country. Let me remark, that it stood the severest conflict, during the war, to which ever human virtue has been called. I call upon every Gentleman here to declare, whether the King of England had any subjects so attached to his family and Government—so loyal as we were. But the genius of Virginia called us for liberty.—Called us from those beloved endearments, which from long habits we were taught to love and revere. We entertained from our earliest infancy, the most sincere regard and reverence for the mother country. Our partiality extended to a predilection for her customs, habits, manners and laws. Thus inclined, when the deprivation of our liberty was attempted, what did we do? What did the genius of Virginia tell us? *Sell all and purchase liberty.* This was a severe conflict. Republican maxims were then esteemed—Those maxims, and the genius of Virginia, landed you safe on the shore of freedom. On this awful occasion, did you want a Federal Government? Did federal ideas possess your minds? Did federal ideas lead you to the most splendid victories? I must again repeat the favorite idea, that the genius of Virginia did, and will again lead us to happiness. To obtain the most splendid prize, you did not consolidate. You accomplished the most glorious ends, by the assistance of the genius of your country. Men were then taught

5.16.12

by that genius, that they were fighting for what was most dear to them. View the most affectionate father—the most tender mother—operated on by liberty, nobly stimulating their sons—their dearest sons—sometimes their only son, to advance to the defence of his country. We have seen sons of Cincinnatus, without splendid magnificence or parade, going, with the genius of their great progenitor Cincinnatus, to the plough—Men who served their country without ruining it—Men who had served it to the destruction of their private patrimonies—Their country owing them amazing amounts, for the payment of which no adequate provision was then made. We have seen such men, throw prostrate their arms at your feet. They did not call for those emoluments, which ambition presents to some imaginations. The soldiers, who were able to command every thing, instead of trampling on those laws, which they were instituted to defend, most strictly obeyed them. The hands of justice have not been laid on a single American soldier. Bring them into contrast with European veterans. You will see an astonishing superiority over the latter. There has been a strict subordination to the laws. The Honorable Gentleman's office gave him an opportunity of viewing if the laws were administered so as to prevent riots, routs, and unlawful assemblies. From his then situation, he could have furnished us with the instances in which licentiousness trampled on the laws.—Among all our troubles we have paid almost to the last shilling, for the sake of justice. We have paid as well as any State: I will not say better. To support the General Government, our own Legislature, to pay the interest of the public debts, and defray contingencies, we have been heavily taxed. To add to these things, the distresses produced by paper money, and by tobacco contracts, were sufficient to render any people discontented. These, Sir, were great temptations; but in the most severe conflict of misfortunes, this code of laws—this genius of Virginia, call it what you will, triumphed over every thing.

5.16.13 Why did it please the Gentleman (Mr. *Corbin*)[28] to bestow such epithets on our country? Have the worms taken posession of the wood, that our strong vessel—our political vessel, has sprung a-leak? He may know better than me, but I consider such epithets to be the most illiberal and unwarrantable aspersions on our laws. The system of laws under which we have lived, has been tried and found to suit our genius. I trust we shall not change this happy system. I cannot so easily take leave of an old friend. Till I see him following after and pursuing other objects, which can pervert the great objects of human legislation, pardon me if I withhold my assent.

5.16.14 Some here speak of the difficulty in forming a new code of laws. Young as we were, it was not wonderful if there was a difficulty in forming and assimilating one system of laws. I shall be obliged to the Gentleman, if he would point out those glaring, those great faults. The efforts of assimilating our laws to our genius has not been found altogether vain.—I shall pass over some other circumstances which I intended to mention, and endeavor to

come to the capital objection, which my Honorable friend made. My worthy friend said, that a republican form of Government would not suit a very extensive country; but that if a Government were judiciously organized and limits prescribed to it; an attention to these principles might render it possible for it to exist in an extensive territory.[29] Whoever will be bold to say, that a Continent can be governed by that system, contradicts all the experience of the world. It is a work too great for human wisdom. Let me call for an example. Experience has been called the best teacher. I call for an example of a great extent of country, governed by one Government, or Congress, call it what you will. I tell him, that a Government may be trimmed up according to Gentlemen's fancy, but it never can operate—It will be but very short-lived. However disagreeable it may be to lengthen my objections, I cannot help taking notice of what the Honorable Gentleman said. To me it appears that there is no check in that Government. The President, Senators, and Representatives all immediately, or mediately, are the choice of the people. Tell me not of checks on paper; but tell me of checks founded on self-love. The English Government is founded on self-love. This powerful irresistible stimulous of self-love has saved that Government. It has interposed that hereditary nobility between the King and Commons. If the House of Lords assists or permits the King to overturn the liberties of the people, the same tyranny will destroy them; they will therefore keep the balance in the democratic branch. Suppose they see the Commons incroach upon the King; self-love, that great energetic check, will call upon them to interpose: For, if the King be destroyed, their destruction must speedily follow. Here is a consideration which prevails, in my mind, to pronounce the British Government, superior in this respect to any Government that ever was in any country. Compare this with your Congressional checks. I beseech Gentlemen to consider, whether they can say, when trusting power, that a mere patriotic profession will be equally operative and efficatious, as the check of self-love. In considering the experience of ages, is it not seen, that fair disinterested patriotism, and professed attachment to rectitude have never been solely trusted to by an enlightened free people?—If you depend on your President's and Senators patriotism, you are gone. Have you a resting place like the British Government? Where is the rock of your salvation? The real rock of political salvation is *self-love* perpetuated from age to age in every human breast, and manifested in every action. If they can stand the temptations of human nature, you are safe. If you have a good President, Senators and Representatives, there is no danger.—But can this be expected from human nature? Without real checks it will not suffice, that some of them are good. A good President, or Senator, or Representative, will have a natural weakness.—Virtue will slumber. The wicked will be continually watching:[30] Consequently you will be undone. Where are your checks? You have no hereditary Nobility—An order of men, to whom human eyes can be cast up for relief: For, says the Constitu-

tion, there is no title of nobility to be granted; which, by the bye, would not have been so dangerous, as the perilous cession of powers contained in that paper: Because, as Montesquieu says, when you give titles of Nobility, you know what you give; but *when you give power, you know not what you give.*[31]—If you say, that out of this depraved mass, you can collect luminous characters, it will not avail, unless this luminous breed will be propagated from generation to generation; and even then, if the number of vicious characters will preponderate, you are undone. And that this will certainly be the case, is, to my mind, perfectly clear.—In the British Government there are real balances and checks—In this system, there are only ideal balances. Till I am convinced that there are actual efficient checks, I will not give my assent to its establishment. The President and Senators have nothing to lose. They have not that interest in the preservation of the Government, that the King and Lords have in England. They will therefore be regardless of the interests of the people. The Constitution will be as safe with one body, as with two. It will answer every purpose of human legislation. How was the Constitution of England when only the Commons had the power? I need only remark, that it was the most unfortunate æra when that country returned to King, Lords and Commons, without sufficient responsibility in the King. When the Commons of England, in the manly language which became freemen, said to their King, *you are our servant,* then the temple of liberty was complete. From that noble source, have we derived our liberty:—That spirit of patriotic attachment to one's country:—That zeal for liberty, and that enmity to tyranny which signalized the then champions of liberty, we inherit from our British ancestors. And I am free to own, that if you cannot love a Republican Government, you may love the British Monarchy;[32] for, although the King is not sufficiently responsible, the responsibility of his agents, and the efficient checks interposed by the British Constitution, render it less dangerous than other Monarchies, or oppressive tyrannical Aristrocracies. What are their checks of exposing accounts?—Their checks upon paper are inefficient and nugatory.—Can you search your President's closet? Is this a real check? We ought to be exceeding cautious, in giving up this life—this soul—of money—this power of taxation to Congress. What powerful check is there here to prevent the most extravagant and profligate squandering of the public money? What security have we in money matters? Enquiry is precluded by this Constitution. I never wish to see Congress supplicate the States. But it is more abhorent to my mind to give them an unlimited and unbounded command over our souls—our lives—our purses, without any check or restraint. How are you to keep enquiry alive? How discover their conduct? We are told by that paper, that a regular statement and account of the receipts and expenditures of all public money, shall be published from time to time. Here is a beautiful check! What time? Here is the utmost latitude left. If those who are in Congress please to put that construction upon it, the words of the Constitution will be satisfied by

publishing those accounts once in 100 years. They may publish or not as they please. Is this like the present despised system, whereby the accounts are to be published monthly?[33]

I come now to speak something of requisitions, which the Honorable Gentleman thought so truly contemptible and disgraceful.[34] That Honorable Gentleman being a child of the revolution, must recollect with gratitude the glorious effects of requisitions. It is an idea that must be grateful to every American. An English army was sent to compel us to pay money contrary to our consent. To force us by arbitrary and tyrannical coercion to satisfy their unbounded demands. We wished to pay with our own consent.—Rather than pay against our consent, we engaged in that bloody contest, which terminated so gloriously. By requisitions we pay with our own consent; by their means we have triumphed in the most arduous struggle, that ever tried the virtue of man. We fought then, for what we are contending now: To prevent an arbitrary deprivation of our property, contrary to our consent and inclination. 5.16.15

{[7 June 1788] I never will give up that *darling* word requisitions—My country may give it up—A majority may wrest it from me, but I will never give it up till my grave. Requisitions are attended with one singular advantage. They are attended by deliberation.—They secure to the States the benefit of correcting oppressive errors.[35] If our Assembly thought requisitions erroneous—If they thought the demand was too great, they might at least supplicate Congress to reconsider,—that it was a little too much. The power of direct taxation was called by the Honorable Gentlemen the soul of the Government:[36] Another Gentleman, called it the lungs of the Government.[37] We all agree, that it is the most important part of the body politic. If the power of raising money be necessary for the General Government, it is no less so for the States. If money be the vitals of Congress, is it not precious for those individuals from whom it is to be taken? Must I give my soul—my lungs, to Congress? Congress must have our souls. The State must have our souls. This is dishonorable and disgraceful. These two coordinate, interferring unlimited powers of harrassing the community, is unexampled: It is unprecedented in history: They are the visionary projects of modern politicians: Tell me not of imaginary means, but of reality; This political solecism will never tend to the benefit of the community. It will be as oppressive in practice as it is absurd in theory. If you part with this which the Honorable Gentleman tells you is the soul of Congress, you will be inevitably ruined. I tell you, they shall not have the soul of Virginia. They tell us, that one collector may collect the Federal and State taxes. The General Government being paramount to the State Legislatures; if the Sheriff is to collect for both; his right hand for the Congress, his left for the State; his right hand being paramount over the left, his collections will go to Congress. We will have the rest. Defficiencies in collections will always operate against the States. Congress being the paramount supreme power, 5.16.16

must not be disappointed. Thus Congress will have an unlimited, unbounded command over the soul of this Commonwealth. After satisfying their uncontrouled demands, what can be left for the States? Not a sufficiency even to defray the expence of their internal administration. They must therefore glide imperceptibly and gradually out of existence. This, Sir, must naturally terminate in a consolidation. If this will do for other people, it never will do for me.}

5.16.17 . . . I shall be told in this place, that those who are to tax us are our Representatives. To this I answer, that there is no real check to prevent their ruining us. There is no actual responsibility. The only semblance of a check is the negative power of not re-electing them. This, Sir, is but a feeble barrier when their personal interest, their ambition and avarice come to be put in contrast with the happiness of the people. All checks founded on any thing but self-love, will not avail. This constitution reflects in the most degrading and mortifying manner on the virtue, integrity, and wisdom of the State Legislatures: It presupposes that the chosen few who go to Congress will have more upright hearts, and more enlightened minds, than those who are members of the individual Legislatures. To suppose that ten Gentlemen shall have more real substantial merit, than 170 is humiliating to the last degree.[38] If, Sir, the diminution of numbers be an augmentation of merit, perfection must centre in one. If you have the faculty of discerning spirits, it is better to point out at once the man who has the most illumined qualities. If 10 men be better than 170, it follows of necessity, that one is better than 10—The choice is more refined. . . .

5.16.18 Congress by the power of taxation—by that of raising an army, and by their controul over the militia, have the sword in one hand, and the purse in the other. Shall we be safe without either? Congress have an unlimited power over both: They are entirely given up by us. Let him candidly tell me, where and when did freedom exist, when the sword and purse were given up from the people? Unless a miracle in human affairs interposed, no nation ever retained its liberty after the loss of the sword and purse. Can you prove by any argumentative deduction, that it is possible to be safe without retaining one of these? If you give them up you are gone.

5.16.19 {[14 June] The means, says the Gentleman, must be commensurate to the end. How does this apply?[39]—All things in common are left with this Government. There being an infinitude in the Government, there must be an infinitude of means to carry it on. This is a sort of mathematical Government that may appear well on paper, but cannot sustain examination, or be safely reduced to practice. The delegation of power to an adequate number of Representatives; and an unimpeded reversion of it back to the people at short periods, form the principal traits of a Republican Government. The idea of a Republican Government in that paper, is something superior to the poor people. The governing persons are the servants of the people. There the servants are greater than their masters; because it includes infinitude,

and infinitude excludes every idea of subordination. In this the creature has destroyed, and soared above the creator. For if its powers be infinite, what rights have the people remaining? By that very argument despotism has made way in all countries, where the people unfortunately have been enslaved by it. We are told the sword and purse are necessary for the national defence. The junction of these without limitation in the same hands, is, by logical and mathematical conclusions, the description of despotism.}

. . . Give us at least a plausible apology why Congress should keep their proceedings in secret. They have the power of keeping them secret as long as they please; for the provision for a periodical publication is too inexplicit and ambiguous to avail any thing. The expression *from time to time* as I have more than once observed, admits of any extension. They may carry on the most wicked and pernicious of schemes, under the dark veil of secrecy. The liberties of a people never were nor ever will be secure, when the transactions of their rulers may be concealed from them. The most iniquitous plots may be carried on against their liberty and happiness. I am not an advocate for divulging indiscriminately all the operations of Government, though the practice of our ancestors in some degree justifies it. Such transactions as relate to military operations, or affairs of great consequence, the immediate promulgation of which might defeat the interests of the community, I would not wish to be published, till the end which required their secrecy should have been effected. But to cover with the veil of secrecy, the common rotine of business, is an abomination in the eyes of every intelligent man, and every friend to his country. 5.16.20

[Mr. *Henry* then, in a very animated manner, expatiated on the evil and pernicious tendency of keeping secret the common proceedings of Government; and said that it was contrary to the practice of other free nations. The people of England, he asserted, had gained immortal honor by the manly boldness wherewith they divulged to all the world, their political disquisitions and operations; and that such a conduct inspired other nations with respect. He illustrated his argument by several quotations.]—He then continued,—I appeal to this Convention if it would not be better for America to take off the veil of secrecy. *Look at us—hear our transactions.* If this had been the language of the Federal Convention, what would have been the result? Such a Constitution would not have come out to your utter astonishment, conceding such dangerous powers, and recommending secrecy in the future transactions of Government. I believe it would have given more general satisfaction, if the proceedings of that Convention had not been concealed from the public eye. This Constitution authorizes the same conduct. There is not an English feature in it. The transactions of Congress may be concealed a century from the public, consistently with the Constitution. This, Sir, is a laudable imitation of the transactions of the Spanish treaty. We have not forgotten with what a thick veil of secrecy those transactions were covered. 5.16.21

5.16.22 We are told that this Government collectively taken, is without an example—That it is national in this part, and federal in that part, &c.[40] We may be amused if we please, by a treatise of political anatomy. In the brain it is national: The stamina are federal—some limbs are federal—others national. The Senators are voted for by the State Legislatures, so far it is federal.—Individuals choose the members of the first branch; here it is national. It is federal in conferring general powers; but national in retaining them. It is not to be supported by the States—The pockets of individuals are to be searched for its maintenance. What signifies it to me, that you have the most curious anatomical description of it in its creation? To all the common purposes of Legislation it is a great consolidation of Government. You are not to have a right to legislate in any but trivial cases: You are not to touch private contracts: You are not to have the right of having arms in your own defence: You cannot be trusted with dealing out justice between man and man. What shall the States have to do? Take care of the poor—repair and make high-ways—erect bridges, and so on, and so on. Abolish the State Legislatures at once. What purposes should they be continued for? Our Legislature will indeed be a ludicrous spectacle—180 men marching in solemn farcical procession, exhibiting a mournful proof of the lost liberty of their country—without the power of restoring it. But, Sir, we have the consolation that it is a mixed Government: That is, it may work sorely on your neck; but you will have some comfort by saying, that it was a Federal Government in its origin.

5.16.23 I beg Gentlemen to consider—lay aside your prejudices—Is this a Federal Government? Is it not a Consolidated Government for every purpose almost? Is the Government of Virginia a State Government after this Government is adopted? I grant that it is a Republican Government—but for what purposes? For such trivial domestic considerations, as render it unworthy the name of a Legislature. I shall take leave of this political anatomy, by observing that it is the most extraordinary that ever entered into the imagination of man. If our political diseases demand a cure—this is an unheard of medicine. The Honorable member, I am convinced, wanted a name for it.[41] Were your health in danger, would you take new medicine? I need not make use of these exclamations; for every member in this Committee must be alarmed at making new and unusual experiments in Government. Let us have national credit and a national treasury in case of war. You never can want national resources in time of war; if the war be a national one; if it be necessary, and this necessity obvious to the meanest capacity. The utmost exertions will be used by the people of America in that case. A republic has this advantage over a monarchy, that its wars are generally founded on more just grounds. A republic can never enter into a war, unless it be a national war—unless it be approved of, or desired by the whole community. Did ever a republic fail to use the utmost resources of the community when a war was necessary? I call for an example. I call also for

an example, when a republic has been engaged in a war contrary to the wishes of its people. There are thousands of examples, where the ambition of its Prince precipitated a nation into the most destructive war. No nation ever withheld power when its object was just and right. I will hazard an observation; I find fault with the paper before you, because the same power that declares war, has the power to carry it on. Is it so in England? The King declares war: The House of Commons gives the means of carrying it on. This is a strong check on the King. He will enter into no war that is unnecessary; for the Commons having the power of withholding the means, will exercise that power, unless the object of the war be for the interest of the nation. How is it here? The Congress can both declare war, and carry it on; and levy your money, as long as you have a shilling to pay. . . .

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. . . We are told that all powers not given are reserved.[42] I am sorry to bring forth hackneyed observations. But, Sir, important truths lose nothing of their validity or weight, by frequency of repetition. The English history is frequently recurred to by Gentlemen. Let us advert to the conduct of the people of that country. The people of England lived without a declaration of rights, till the war in the time of Charles Ist. That King made usurpations upon the rights of the people. Those rights were in a great measure before that time undefined. Power and privilege then depended on implication and logical discussion. Though the declaration of rights was obtained from that King, his usurpations cost him his life. The limits between the liberty of the people, and the prerogative of the King, were still not clearly defined. The rights of the people continued to be violated till the Steward family was banished in the year 1688. The people of England magnanimously defended their rights, banished the tyrant, and prescribed to William Prince of Orange, *by the Bill of Rights,* on what terms he should reign. And this Bill of Rights put an end to all construction and implication. Before this, Sir, the situation of the public liberty of England was dreadful. For upwards of a century the nation was involved in every kind of calamity, till the Bill of Rights put an end to all, by defining the rights of the people, and limiting the King's prerogative. Give me leave to add (if I can add any thing to so splendid an example) the conduct of the American people. They Sir, thought *a Bill of Rights* necessary. It is alledged that several States, in the formation of their governments, omitted a Bill of Rights. To this I answer, that they had the substance of a Bill of Rights contained in their Constitutions, which is the same thing. I believe that Connecticut has preserved by her Constitution her royal charter, which clearly defines and secures the great rights of mankind—Secure to us the great important rights of humanity, and I care

5.16.24

not in what form it is done. Of what advantage is it to the American Congress to take away this great and general security? I ask of what advantage is it to the public or to Congress to drag an unhappy debtor, not for the sake of justice; but to gratify the malice of the plaintiff, with his witnesses to the Federal Court, from a great distance? What was the principle that actuated the Convention in proposing to put such dangerous powers in the hands of any one? Why is the trial by jury taken away? All the learned arguments that have been used on this occasion do not prove that it is secured. Even the advocates for the plan do not all concur in the certainty of its security. Wherefore is religious liberty not secured? One Honorable Gentleman who favors adoption, said that he had had his fears on the subject.[43] If I can well recollect, he informed us that he was perfectly satisfied by the powers of reasoning (with which he is so happily endowed) that those fears were not well grounded. There is many a religious man who knows nothing of argumentative reasoning;—there are many of our most worthy citizens, who cannot go through all the labyrinths of syllogistic argumentative deductions, when they think that the rights of conscience are invaded. This sacred right ought not to depend on constructive logical reasoning. When we see men of such talents and learning, compelled to use their utmost abilities to convince themselves that there is no danger, is it not sufficient to make us tremble? Is it not sufficient to fill the minds of the ignorant part of men with fear? If Gentlemen believe that the apprehensions of men will be quieted, they are mistaken; since our best informed men are in doubt with respect to the security of our rights. Those who are not so well informed will spurn at the Government. When our common citizens, who are not possessed with such extensive knowledge and abilities, are called upon to change their Bill of Rights, (which in plain unequivocal terms, secures their most valuable rights and privileges) for construction and implication, will they implicitly acquiesce? Our Declaration of Rights tells us, "That all men are by nature free and independent, &c." (Here Mr. *Henry* read the Declaration of Rights.)[44] Will they exchange these Rights for logical reasons? If you had a thousand acres of land, dependent on this, would you be satisfied with logical construction? Would you depend upon a title of so disputable a nature? The present opinions of individuals will be buried in entire oblivion when those rights will be thought of. That sacred and lovely thing Religion, ought not to rest on the ingenuity of logical deduction. Holy Religion, Sir, will be prostituted to the lowest purposes of human policy. What has been more productive of mischief among mankind than Religious disputes. Then here, Sir, is the foundation for such disputes, when it requires learning and logical deduction to perceive that religious liberty is secure. The Honorable member told us that he had doubts with respect to the judiciary department. I hope those doubts will be explained.—He told us that his object was Union. I admit that the reality of Union and not the name, is the object which most merits the attention of every friend to his country. He told you

that you should hear many great *sounding words* on our side of the question. We have heard the *word Union* from him. I have heard no word so often pronounced in this House as he did this. I admit that the American Union is dear to every man—I admit that every man who has three grains of information, must know and think that Union is the best of all things. But as I said before, we must not mistake the end for the means. If he can shew that the rights of the Union are secure, we will consent. It has been sufficiently demonstrated that they are not secured. It sounds mighty prettily to Gentlemen to curse paper money and honestly pay debts. But apply to the situation of America, and you will find there are thousands and thousands of contracts, whereof equity forbids an exact literal performance. Pass that government, and you will be bound hand and foot. There was an immense quantity of depreciated continental paper money in circulation at the conclusion of the war. This money is in the hands of individuals to this day. The holders of this money may call for the nominal value, if this government be adopted. This State may be compelled to pay her proportion of that currency pound for pound. Pass this government and you will be carried to the Federal Court (if I understand that paper right) and you will be compelled to pay shilling for shilling. I doubt on the subject, at least as a public man, I ought to have doubts. A State may be sued in the Federal Court by the paper on your table. It appears to me then, that the holder of the paper money may require shilling for shilling. If there be any latent remedy to prevent this, I hope it will be discovered.

The precedent, with respect to the Union between England and Scotland, 5.16.25
does not hold. The Union of Scotland speaks in plain and direct terms. Their privileges were particularly secured. It was expressly provided, that they should retain their own particular laws. Their nobles have a right to choose Representatives to the number of sixteen.—I might thus go on and specify particulars, but it will suffice to observe generally, that their rights and privileges were expressly and unequivocally reserved.—The power of direct taxation was not given up by the Scotch people. There is no trait in that Union which will maintain their arguments. In order to do this, they ought to have proved that Scotland united without securing their rights, and afterwards got that security by subsequent amendments. Did the people of Scotland do this? No, Sir, like a sensible people, they trusted nothing to hazard. If they have but 45 members, and those be often corrupted, these defects will be greater here. The number will be smaller, and they will be consequently the more easily corrupted. Another Honorable Gentleman advises us to give this power, in order to exclude the necessity of going to war.[45] He wishes to establish national credit I presume—and imagines that if a nation has public faith and shews a disposition to comply with her engagements, she is safe among ten thousand dangers. If the Honorable Gentleman can prove that this paper is calculated to give us public faith, I will be satisfied. But if you be in constant preparation for war, on such airy

and imaginary grounds, as the mere possibility of danger, your government must be military, which will be inconsistent with the enjoyment of liberty. But, Sir, we must become formidable, and have a strong government to protect us from the British nation. Will the paper on the table prevent the attacks of the British navy, or enable us to raise a fleet equal to the British fleet? The British have the strongest fleet in Europe, and can strike any where. It is the utmost folly to conceive, that that paper can have such an operation. It will be no less so to attempt to raise a powerful fleet. With respect to requisitions, I beseech Gentlemen to consider the importance of the subject. We who are for amendments propose, (as has been frequently mentioned) that a requisition shall be made for £200,000 for instance, instead of direct taxation, and that if it be not complied with, then it shall be raised by direct taxes. We do not wish to have strength to refuse to pay them, but to possess the power of raising the taxes in the most easy mode for the people. But says he, you may delay us by this mode.—Let us see if there be not sufficient to counterbalance this evil. The oppression arising from taxation, is not from the amount but, from the mode—a thorough acquaintance with the condition of the people, is necessary to a just distribution of taxes. The whole wisdom of the science of Government, with respect to taxation, consists in selecting that mode of collection which will best accommodate the convenience of the people. When you come to tax a great country, you will find that ten men are too few to settle the manner of collection. One capital advantage which will result from the proposed alternative is this, that there will be necessary communications between your ten members in Congress, and your 170 Representatives here. If it goes through the hands of the latter, they will know how much the citizens *can* pay, and by looking at the paper on your table, they will know how much they *ought* to pay. No man is possessed of sufficient information to know how much we can or ought to pay.

5.16.26 We might also remonstrate, if by mistake or design, they should call for a greater sum than our proportion. After a remonstrance, and a free investigation between our Representatives here, and those in Congress, the error would be removed.

5.16.27 Another valuable thing which it will produce is, that the people will pay the taxes chearfully. It is supposed, that this would occasion a waste of time, and be an injury to public credit. This would only happen if requisitions should not be complied with. In this case the delay would be compensated by the payment of interest, which with the addition of the credit of the State to that of the General Government, would in a great measure obviate this objection. But if it had all the force which it is supposed to have, it would not be adequate to the evil of direct taxation. But there is every probability that requisitions would be then complied with. Would it not then be our interest, as well as duty, to comply? After non-

compliance, there would be a general acquiescence in the exercise of this power. We are fond of giving power, at least power which is constitutional. Here is an option to pay according to your own mode, or otherwise. If you give probability fair play, you must conclude, that they would be complied with. Would the Assembly of Virginia by refusal, destroy the country and plunge the people into miseries and distress? If you give your reasoning faculty fair play, you cannot but know, that payment must be made when the consequence of a refusal would be an accumulation of inconveniences to the people. Then they say, that if requisitions be not complied with, in case of a war, that the destruction of the country may be the consequence; that therefore, we ought to give the power of taxation to the Government to enable it to protect us. Would not this be another reason for complying with requisitions, to prevent the country from being destroyed? You tell us, that unless requisitions be complied with, your commerce is gone. The prevention of this also, will be an additional reason to comply.

He tells us, that responsibility is secured by direct taxation. Responsibility instead of being increased, will be lost for ever by it. In our State Government, our Representatives may be severally instructed by their constituents. There are no persons to counteract their operations. They can have no excuse for deviating from our instructions. In the General Government other men have power over the business. When oppressions may take place, our Representatives may tell us, *We contended for your interest, but we could not carry our point, because the Representatives from Massachusetts, New Hampshire, Connecticut, &c. were against us.* Thus, Sir, you may see, that there is no real responsibility. He further said, that there was such a contrariety of interests, as to hinder a consolidation. I will only make one remark—There is a variety of interests—Some of the States owe a great deal on account of paper money—Others very little—Some of the Northern States have collected and barrelled up paper money. Virginia has sent thither her cash long ago. There is little or none of the Continental paper money retained in this State. Is it not their business to appreciate this money? Yes,—and it will be your business to prevent it. But there will be a majority against you, and you will be obliged to pay your share of this money in its nominal value. It has been said by several Gentlemen, that the freeness of elections would be promoted by throwing the country into large districts.[46] I contend, Sir, that it will have a contrary effect. It will destroy that connection that ought to subsist between the electors and the elected. If your elections be by districts instead of counties, the people will not be acquainted with the candidates. They must therefore be directed in the elections by those who know them. So that instead of a confidential connection between the electors and the elected, they will be absolutely unacquainted with each other. A common man must ask a man of influence how he is to proceed, and for whom he must vote. The elected, therefore,

will be careless of the interest of the electors. It will be a common job to extort the suffrages of the common people for the most influential characters. The same men may be repeatedly elected by these means. This, Sir, instead of promoting the freedom of elections, leads us to an Aristocracy. Consider the mode of elections in England. Behold the progress of an election in an English shire. A man of enormous fortune will spend 30,000 l. or 40,000 l. to get himself elected. This is frequently the case. Will the Honorable Gentleman say, that a poor man, as enlightened as any man in the island, has an equal chance with a rich man, to be elected? He will stand no chance though he may have the finest understanding of any man in the shire. It will be so here. Where is the chance that a poor man can come forward with the rich? The Honorable Gentleman will find instead of supporting Democratical principles, it goes absolutely to destroy them. The State Governments, says he, will possess greater advantages than the General Government, and will consequently prevail. His opinion and mine are diametrically opposite. Bring forth the Federal allurements, and compare them with the poor contemptible things that the State Legislatures can bring forth. On the part of the State Legislatures, there are Justices of Peace and militia officers—And even these Justices and officers, are bound by oath in favour of the Constitution. A constable is the only man who is not obliged to swear paramount allegiance to this beloved Congress. On the other hand, there are rich, fat Federal emoluments—your rich, snug, fine, fat Federal offices—The number of collectors of taxes and excises will outnumber any thing from the States. Who can cope with the excisemen and taxmen? There are none in this country, that can cope with this class of men alone. But, Sir, is this the only danger? Would to Heaven that it were. If we are to ask which will last the longest—the State or the General Government, you must take an army and a navy into the account. Lay these things together, and add to the enumeration the superior abilities of those who manage the General Government.[47] Can then the State Governments look it in the face? You dare not look it in the face now, when it is but an *embryo*. The influence of this Government will be such, that you never can get amendments; for if you propose alterations, you will affront them. Let the Honorable Gentleman consider all these things and say, whether the State Governments will last as long as the Federal Government. With respect to excises, I can never endure them. They have been productive of the most intolerable oppressions every where. Make a probable calculation of the expence attending the Legislative, Executive, and Judiciary. You will find that there must be an immense increase of taxes. We are the same mass of people we were before.—In the same circumstances—The same pockets are to pay—The expences are to be increased—What will enable us to bear this augmentation of taxes? The mere form of the Government will not do it. A plain understanding cannot conceive how the taxes can be diminished, when our expences are augmented, and the means of paying them not increased.

With respect to our tax-laws, we have purchased a little knowledge by sad experience upon the subject. Reiterated experiments have taught us what can alleviate the distresses and suit the convenience of the people. But we are now to throw away that system, by which we have acquired this knowledge, and send ten men to legislate for us. 5.16.28

The Honorable Gentleman was pleased to say, that the representation of the people was the vital principle of this Government. I will readily agree that it ought to be so.—But I contend that this principle is only nominally, and not substantially to be found there. We contended with the British about representation; they offered us such a representation as Congress now does. They called it a virtual representation. If you look at that paper you will find it so there. Is there but a virtual representation in the upper House? The States are represented *as States*, by two Senators each. This is virtual, not actual. They encounter you with Rhode-Island and Delaware. This is not an actual representation. What does the term representation signify? It means that a certain district—a certain association of men should be represented in the Government for *certain ends*. These ends ought not to be impeded or obstructed in any manner. Here, Sir, this populous State has not an adequate share of legislative influence. The two petty States of Rhode-Island and Delaware, which together are infinitely inferior to this State, in extent and population, have double her weight, and can counteract her interest. I say, that the representation in the Senate, as applicable to States, is not actual. Representation is not therefore the vital principle of this Government—So far it is wrong. 5.16.29

Rulers are the servants and agents of the people—The people are their masters—Does the new Constitution acknowledge this principle? Trial by jury is the best appendage of freedom—Does it secure this? Does it secure the other great rights of mankind? Our own Constitution preserves these principles. The Honorable Gentleman contributed to form that Constitution: The applauses so justly due to it, should, in my opinion, go to the condemnation of that paper. 5.16.30

With respect to the failures and errors of our Government, they might have happened in any Government.—I do not justify what merits censure, but I shall not degrade my country. As to deviations from justice, I hope they will be attributed to the errors of the head, and not to those of the heart.

The Honorable Gentleman did our Judiciary honour in saying, that they had firmness to counteract the Legislature in some cases. Yes, Sir, our Judges opposed the acts of the Legislature.[48] We have this land mark to guide us.—They had fortitude to declare that they were the Judiciary and would oppose unconstitutional acts. Are you sure that your Federal Judiciary will act thus? Is that Judiciary so well constructed and so independent of the other branches, as our State Judiciary? Where are your land-marks in this Government? I will be bold to say you cannot find any in it. I take it as the highest encomium on this country, that the acts of the 5.16.31

Legislature, if unconstitutional, are liable to be opposed by the Judiciary.

5.16.32 Then the Honorable Gentleman said, that the two Judiciaries and Legislatures, would go in a parallel line and never interfere—That as long as each was confined to its proper objects, that there would be no danger of interference—That like two parallel lines as long as they continued in their parallel direction they never would meet. With submission to the Honorable Gentleman's opinion, I assert, that there is danger of interference, because no line is drawn between the powers of the two Governments in many instances; and, where there is a line, there is no check to prevent the one from encroaching upon the powers of the other. I therefore contend that they must interfere, and that this interference must subvert the State Government, as being less powerful. Unless your Government have checks, it must inevitably terminate in the destruction of your privileges. I will be bold to say, that the British Government has real checks. I was attacked by Gentlemen, as if I had said that I loved the British Government better than our own.[49] I never said so. I said that if I were obliged to relinquish a Republican Government, I would chuse the British Monarchy. I never gave the preference to the British or any other Government, when compared to *that* which the Honorable Gentleman assisted to form. I was constrained to say what I said. When two disagreeable objects present themselves to the mind, we choose that which has the least deformity.

16 June 1788[50]

5.16.33 Mr. Chairman.—The necessity of a Bill of Rights appear to me to be greater in this Government, than ever it was in any Government before.

5.16.34 {[*7 June 1788*] There are certain maxims by which every wise and enlightened people will regulate their conduct. There are certain political maxims, which no free people ought ever to abandon. Maxims of which the observance is essential to the security of happiness. It is impiously irritating the avenging hand of Heaven, when a people who are in the full enjoyment of freedom, launch out into the wide ocean of human affairs, and desert those maxims which alone can preserve liberty. Such maxims, humble as they are, are those only which can render a nation safe or formidable. Poor little humble republican maxims have attracted the admiration and engaged the attention of the virtuous and wise in all nations, and have stood the shock of ages. We do not now admit the validity of maxims, which we once delighted in. We have since adopted maxims of a different but more *refined nature:* New maxims which tend to the prostration of republicanism.

5.16.35 We have one, Sir, *That all men are by nature free and independent, and have certain inherent rights, of which, when they enter into society, they*

cannot by any compact deprive or divest their posterity.[51] We have a set of maxims of the same spirit, which must be beloved by every friend to liberty, to virtue, to mankind. Our Bill of Rights contains those admirable maxims.}

. . . I observed already, that the sense of the European nations, and particularly Great-Britain, is against the construction of rights being retained, which are not *expressly* relinquished.[52] I repeat, that all nations have adopted this construction—That all rights not expressly and unequivocally reserved to the people, are impliedly and incidentally relinquished to rulers; as necessarily inseparable from the delegated powers. It is so in Great-Britain: For every possible right which is not reserved to the people by some express provision or compact, is within the King's prerogative. It is so in that country which is said to be in such full possession of freedom. It is so in Spain, Germany, and other parts of the world. Let us consider the sentiments which have been entertained by the people of America on this subject. At the revolution, it must be admitted, that it was their sense to put down those great rights which ought in all countries to be held inviolable and sacred. Virginia did so we all remember. She made a compact to reserve, expressly, certain rights. When fortified with full, adequate, and abundant representation, was she satisfied with that representation? No.—She most cautiously and guardedly reserved and secured those invaluable, inestimable rights and privileges, which no people, inspired with the least glow of the patriotic love of liberty, ever did, or ever can, abandon. She is called upon now to abandon them, and dissolve that compact which secured them to her. She is called upon to accede to another compact which most infallibly supercedes and annihilates her present one. Will she do it?—This is the question. If you intend to reserve your unalienable rights, you must have the most express stipulation. For if implication be allowed, you are ousted of those rights. If the people do not think it necessary to reserve them, they will be supposed to be given up. How were the Congressional rights defined when the people of America united by a confederacy to defend their liberties and rights against the tyrannical attempts of Great-Britain? The States were not then contented with implied reservation. No, Mr. Chairman. It was expressly declared in our Confederation that every right was retained by the States respectively, which was not given up to the Government of the United States.[53] But there is no such thing here. You therefore by a natural and unavoidable implication, give up your rights to the General Government. Your own example furnishes an argument against it. If you give up these powers, without a Bill of Rights, you will exhibit the most absurd thing to mankind that ever the world saw—A Government that has abandoned all its powers—The powers of direct taxation, the sword, and the purse. You have disposed of them to Congress, without a Bill of Rights—without check, limitation, or controul. And still you have checks and guards—still you keep barriers—pointed where? Pointed against your weakened, prostrated, enervated State Government! You have a Bill of Rights to defend you against the

5.16.36

State Government, which is bereaved of all power; and yet you have none against Congress, though in full and exclusive possession of all power! You arm yourselves against the weak and defenceless, and expose yourselves naked to the armed and powerful. Is not this a conduct of unexampled absurdity? What barriers have you to oppose to this most strong energetic Government? To that Government you have nothing to oppose. All your defence is given up. This is a real actual defect.—It must strike the mind of every Gentleman. When our Government was first instituted in Virginia, we declared the common law of England to be in force.—That system of law which has been admired, and has protected us and our ancestors, is excluded by that system.—Added to this, we adopted a Bill of Rights. By this Constitution, some of the best barriers of human rights are thrown away. Is there not an additional reason to have a Bill of Rights? By the ancient common law, the trial of all facts is decided by a jury of impartial men from the immediate vicinage. This paper speaks of different juries from the common law, in criminal cases; and in civil controversies excludes trial by jury altogether. There is therefore more occasion for the supplementary check of a Bill of Rights now, than then. Congress from their general powers may fully go into the business of human legislation. They may legislate in criminal cases from treason to the lowest offence, petty larceny. They may define crimes and prescribe punishments. In the definition of crimes, I trust they will be directed by what wise Representatives ought to be governed by. But when we come to punishments, no latitude ought to be left, nor dependence put on the virtue of Representatives. What says our Bill of Rights? "That excessive bail ought not to be required, nor excessive fines imposed. nor cruel and unusual punishments inflicted."[54] Are you not therefore now calling on those Gentlemen who are to compose Congress, to prescribe trials and define punishments without this controul? Will they find sentiments there similar to this Bill of Rights? You let them loose— you do more—you depart from the genius of your country. That paper tells you, that the trial of crimes shall be by jury, and held in the State where the crime shall have been committed.—Under this extensive provision, they may proceed in a manner extremely dangerous to liberty.—Persons accused may be carried from one extremity of the State to another, and be tried not by an impartial jury of the vicinage, acquainted with his character, and the circumstances of the fact; but by a jury unacquainted with both, and who may be biassed against him.—Is not this sufficient to alarm men?—How different is this from the immemoral practice of your British ancestors, and your own? I need not tell you, that by the common law a number of hundredors were required to be on a jury, and that afterwards it was sufficient if the jurors came from the same county. With less than this the people of England have never been satisfied. That paper ought to have declared the common law in force.

In this business of legislation, your Members of Congress will lose the restriction of not imposing excessive fines, demanding excessive bail, and inflicting cruel and unusual punishments.—These are prohibited by your Declaration of Rights. What has distinguished our ancestors?—That they would not admit of tortures, or cruel and barbarous punishments. But Congress may introduce the practice of the civil law, in preference to that of the common law.—They may introduce the practice of France, Spain, and Germany—Of torturing to extort a confession of the crime. They will say that they might as well draw examples from those countries as from Great-Britain; and they will tell you, that there is such a necessity of strengthening the arm of Government that they must have a criminal equity, and extort confession by torture, in order to punish with still more relentless severity. We are then lost and undone.—And can any man think it troublesome, when we can by a small interference prevent our rights from being lost?—If you will, like the Virginian Government, give them knowledge of the extent of the rights retained by the people, and the powers themselves, they will, if they be honest men, thank you for it.—Will they not wish to go on sure grounds?—But if you leave them otherwise, they will not know how to proceed; and being in a state of uncertainty, they will assume rather than give up powers by implication. A Bill of Rights may be summed up in a few words. What do they tell us?—That our rights are reserved.—Why not say so? Is it because it will consume too much paper? Gentlemen's reasonings against a Bill of Rights, do not satisfy me. Without saying which has the right side, it remains doubtful. A Bill of Rights is a favourite thing with the Virginians, and the people of the other States likewise. It may be their prejudice, but the Government ought to suit their geniuses, otherwise its operation will be unhappy. A Bill of Rights, even if its necessity be doubtful, will exclude the possibility of dispute, and with great submission, I think the best way is to have no dispute. In the present Constitution, they are restrained from issuing general warrants to search suspected places, or seize persons not named, without evidence of the commission of the fact, &c. There was certainly some celestial influence governing those who deliberated on that Constitution:—For they have with the most cautious and enlightened circumspection, guarded those indefeasible rights, which ought ever to be held sacred. The officers of Congress may come upon you, fortified with all the terrors of paramount federal authority.—Excisemen may come in multitudes:—For the limitation of their numbers no man knows.—They may, unless the General Government be restrained by a Bill of Rights, or some similar restriction, go into your cellars and rooms, and search, ransack and measure, every thing you eat, drink and wear. They ought to be restrained within proper bounds. With respect to the freedom of the press, I need say nothing; for it is hoped that the Gentlemen who shall compose Congress, will take care as little as possible, to infringe the rights

5.16.37

of human nature.—This will result from their integrity. They should from prudence, abstain from violating the rights of their constituents. They are not however expressly restrained.—But whether they will intermeddle with that palladium of our liberties or not, I leave you to determine.

17 June 1788

[*The 7th clause read.*]

5.16.38 Mr. Chairman.—We have now come to the ninth section, and I consider myself at liberty to take a short view of the whole. I wish to do it very briefly. Give me leave to remark, that there is a Bill of Rights in that Government. There are express restrictions which are in the shape of a Bill of Rights: But they bear the name of the ninth section. The design of the negative expressions in this section is to prescribe limits, beyond which the powers of Congress shall not go. These are the sole bounds intended by the American Government. Where abouts do we stand with respect to a Bill of Rights? Examine it, and compare it to the idea manifested by the Virginian Bill of Rights, or that of the other States. The restraints in this Congressional Bill of Rights, are so feeble and few, that it would have been infinitely better to have said nothing about it. The fair implication is, that they can do every thing they are not forbidden to do. What will be the result if Congress, in the course of their legislation, should do a thing not restrained by this ninth section? It will fall as an incidental power to Congress, not being prohibited expressly in the Constitution. The first prohibition is, that the privilege of the writ of *habeas corpus* shall not be suspended, but when in cases of rebellion, or invasion, the public safety may require it. It results clearly, that if it had not said so, they could suspend it in all cases whatsoever. It reverses the position of the friends of this Constitution, that every thing is retained which is not given up. For instead of this, every thing is given up, which is not expressly reserved.[55]—It does not speak affirmatively, and say that it shall be suspended in those cases. But that it shall not be suspended but in certain cases; going on a supposition that every thing which is not negatived, shall remain with Congress. If the power remains with the people, how can Congress supply the want of an affirmative grant? They cannot do it but by implication, which destroys their doctrine. The Virginia Bill of Rights interdicts the relinquishment of the sword and purse without controul. That Bill of Rights secures the great and principal rights of mankind. But this Bill of Rights extends to but very few cases, and is destructive of the doctrine advanced by the friends of that paper.

5.16.39 If *ex post facto* laws had not been interdicted, they might also have been extended by implication at pleasure. Let us consider whether this restriction be founded in wisdom or good policy. If no *ex post facto* laws be made, what

is to become the old continental paper dollars? Will not this country be forced to pay it in gold and silver, shilling for shilling? Gentlemen may think that this does not deserve an answer: But it is an all important question. Because the property of this country is not commensurate to the enormous demand. Our own Government triumphs with infinite superiority when put in contrast with that paper.—The want of a Bill of Rights will render all their laws, however oppressive, constitutional.

If the Government of Virginia passes a law in contradiction to our Bill of Rights, it is nugatory. By that paper the national wealth is to be disposed of under the veil of secrecy: For the publication from time to time, will amount to nothing; and they may conceal what they may think requires secrecy. How different is it in your own Government?—Have not the people seen the journals of our Legislature every day during every session? Is not the lobby full of people every day? Yet, Gentlemen say, that the publication from time to time is a security unknown in our State Government! Such a regulation would be nugatory and vain, or at least needless, as the people see the journals of our Legislature, and hear their debates every day. If this be not more secure than what is in that paper, I will give up that I have totally misconceived the principles of the Government. You are told, that your rights are secured in this new Government. They are guarded in no other part but this ninth section. The few restrictions in that section are your only safeguards. They may controul your actions, and your very words, without being repugnant to that paper. The existence of your dearest privileges will depend on the consent of Congress: For these are not within the restrictions of the ninth section. 5.16.40

If Gentlemen think that securing the slave trade is a capital object; that the privilege of the *habeas corpus* is sufficiently secured; that the exclusion of *ex post facto* laws will produce no inconvenience; that the publication from time to time will secure their property; in one word, that this section alone will sufficiently secure their liberties, I have spoken in vain.—Every word of mine, and of my worthy coadjutor [George Mason], is lost. I trust that Gentlemen, on this occasion, will see the great objects of religion, liberty of the press, trial by jury, interdiction of cruel punishments, and every other sacred right secured, before they agree to that paper. These most important human rights are not protected by that section, which is the only safeguard in the Constitution.—My mind will not be quieted till I see something substantial come forth in the shape of a Bill of Rights. 5.16.41

1. Cf. *The Federalist* no. 15, 92–98; Pennsylvania Convention Minority 3.11.30 n. 15.
2. See 5.16.1. On consolidation see Plebeian 6.11.15 n. 9.
3. See 5.16.2. Cf. Brutus VII, 2.9.86.
4. See Lowndes 5.12.1–2 and n. 7.
5. James Madison replied that "on a candid examination of history, we shall find that turbulence, violence, and abuse of power, by the majority trampling on the rights of the minority, have produced factions and commotions, which, in republics, have,

more frequently than any other cause, produced despotism." The United States is not immune from this danger, which must be guarded against. "Perhaps, in the progress of this discussion, it will appear that the only possible remedy for those evils, and means of preserving and protecting the principles of republicanism will be found in that very system which is now exclaimed against as the parent of oppression." Elliot III, 87–88. See *The Federalist* no. 10 and Madison's speeches in the Constitutional Convention on 6 June and 26 June. Farrand I, 134–36, 421–23. See references in Brutus IV, 2.9.45 n.31

6. Cf. George Mason's speech on the Executive in the Constitutional Convention, Farrand I, 101–2, 110–14 (4 June); Brutus VII, 2.9.86 and n.58.

7. Thorpe, *Federal and State Constitutions* VII, 3813.

8. Edmund Pendleton, Elliot III, 37. Mr. Pendleton was elected president of the convention, but most of the debate took place in the committee of the whole, with George Wyth in the chair.

9. Elliot III, 37.

10. Elliot regards this sentence as an interpolation of the compiler of the debates; but there is no such indication in the original edition. It is more likely that Henry is referring to a part of Pendleton's discussion that was only partly reported. Elliot III, 53, 38–39.

11. Edmund Randolph replied: "But it is insinuated by the honorable gentleman, that we want to be a grand, splendid, and magnificent people: we wish not to become so: the magnificence of a royal court is not our object. We want a government, sir—a government that will have stability, and give us security; for our present government is destitute of the one and incapable of producing the other. It cannot, perhaps, with propriety, be denominated a government, being void of that energy requisite to enforce sanctions. I wish my country not to be contemptible in the eyes of foreign nations. A well-regulated community is always respected. It is the internal situation, the defects of government, that attract foreign contempt; that contempt, sir, is too often followed by subjugation." Elliot III, 81. Not all of the Federalists were so modest, and Henry was right in thinking that some friends of the Constitution had visions of glory. See McMaster and Stone 127–29 (A Pennsylvania Farmer); Northampton, Massachusetts *Hampshire Gazette* 17 October 1787 (Anon. "Observe . . ."); *Virginia Independent Chronicle* 28 November 1787 ("Extract of a letter from a well informed correspondent . . ."); New Hampshire *Freeman's Oracle* 6 June 1788 (A Patriotic Citizen); Herbert J. Storing, "The 'Other' Federalist Papers: A Preliminary Sketch," *Political Science Reviewer* VI (1976), 215–47.

12. Elliot III, 65–66. For Anti-Federalist views of the circumstances of the United States see Federal Farmer I, 2.8.1 n. 4; Plebeian 6.11.5 n. 6.

13. Randolph charged that the Virginia legislature had frequently violated the constitution, giving as an example the following: "A man, who was then a citizen, was deprived of his life thus: from a mere reliance on general reports, a gentleman in the House of Delegates informed the house, that a certain man (Josiah Philips) had committed several crimes, and was running at large, perpetrating other crimes. He therefore moved for leave to attaint him; he obtained that leave instantly; no sooner did he obtain it, than he drew from his pocket a bill ready written for that effect; it was read three times in one day, and carried to the Senate. I will not say that it passed the same day through the Senate; but he was attainted very speedily and precipitately, without any proof better than vague reports. Without being confronted with his accusers and witnesses, without the privilege of calling for evidence in his behalf, he was sentenced to death, and was afterwards actually executed." Elliot III, 66–67. Henry's reply here left him open to severe criticism, which was administered by John Marshall. Elliot III, 223. It appears, however, that Henry's conduct was open to a better defense than he provided himself. See Wirt, *Sketches of Patrick Henry* 234–41; and the full discussion by William W. Crosskey, *Politics and the Constitution* II, 944 ff. Philips was executed not under the attainder but on trial for highway robbery—the indictment having been brought by the attorney general, Edmund Randolph.

14. Elliot III, 66–67.

15. Thorpe, *Federal and State Constitutions* VII, 3813.

16. Ibid.

17. Ibid.

18. Cf. below Mason (Virginia) 5.17.1; Smith 6.12.2. The Federalist contention was that rejection of the Constitution meant destruction of the Union. See, for example, Ford, *Pamphlets* 46 (A Citizen of America), 122 (A Citizen of Philadelphia); McMaster and Stone 386 (Wilson). On claims that the Anti-Federalists preferred separate confederacies, see below, n. 25; Centinel XI, 2.7.142 n. 75; Henry 5.16.11 n.25. It was a concern for Union that finally reconciled many Anti-Federalists to the Constitution. See, for example, Randolph 2.5, Turner 4.18.

19. The reference is probably to Pendleton, Elliot III, 39. Elliot, incidentally, changes Henry's remarks here to "a judiciary which will correct all . . ."

20. The original text does not begin a new paragraph at this point.

21. See Federal Farmer X, 2.8.110 n. 72. On responsibility see Centinel I, 2.7.7 n. 4.

22. Randolph used this term, but upon being criticized by Henry, he explained (according to the reporter) "that he did not use that word to excite any odium, but merely to convey an idea of a multitude." Elliot III, 148.

23. To this argument John Marshall replied: "That economy and industry are essential to our happiness, will be denied by no man. But the present government will not add to our industry. It takes away the incitements to industry, by rendering property insecure and unprotected. It is the paper on your table that will promote and encourage industry." Elliot III, 231. See Candidus 4.9.18 and n. 6.

24. Randolph, Elliot III, 79.

25. Ibid. 79–80; see Randolph 2.5.26 Henry was thought by some Federalists to favor separate confederacies. See *Virginia Independent Chronicle*, 6 February 1788 (An Old State Soldier) 9 April 1788 (A Freeholder); C. Griffin to Thomas Fitzsimons, 15 February 1788, Bancroft, *History of the Formation of the Constitution* II, 461; Edward Carrington to Thomas Jefferson, 24 April 1788, *Proceedings of the Massachusetts Historical Society*, 2d ser. 17 (1903): 497; James McClurg to James Madison, 5 August 1787, ibid. 471. See Centinel XI, 2.7.142 n. 75; James Madison to Thomas Jefferson, 6 June 1787, *Documentary History of the Constitution* IV, 184. On the general question of separate confederacies, see above, vol. 1, ch. 4 n. 2.

26. See Mason on the small republic, (5.17.1) and Randolph's reply, Elliot III, 84–85.

27. Above, 5.16.10.

28. Elliot III, 104–6.

29. Randolph, Elliot III, 84–85; cf. Corbin, ibid. 107; see references in Agrippa IV, 4.6.16 n. 10.

30. For other expressions of this theme see Federal Farmer IV, 2.8.58 n. 44.

31. Montesquieu, *Considerations on the Greatness of the Romans and Their Decline* XI.

32. For other comparisons of the British king and the proposed presidency, see Philadelphiensis XII, 3.9.96 n. 37.

33. Articles of Confederation, Art. 9, para. 7: "The Congress of the United States . . . shall publish the journal of their proceedings monthly, except such parts thereof, relating to treaties, alliances or military operations, as in their judgment, require secrecy . . ." See 5.16.20.

34. Randolph, Elliot III, 114–20.

35. Cf. Alexander Hamilton's remarks to the same effect: Farrand I, 286 (18 June); *The Federalist* no. 15, 93, 97–98; Elliot II, 231. Cf. Brutus X, 2.9.128 and n. 84.

36. Randolph: "Money is the nerve—the life and soul of a government." Elliot III 115. Cf. *The Federalist* no. 30, p. 188: "Money is, with propriety, considered as the vital principle of the body politic; as that which sustains its life and motion and enables it to perform its most essential functions."

37. Corbin, Elliot III, 110.

38. See Corbin, Elliot III, 107–8; Randolph, ibid. 125–26.

39. Regarding military and taxing powers, Madison argued: "The means ought to be commensurate to the end. The end is general protection. This cannot be effected

without a general power to use the strength of the Union." Elliot III, 394. Cf. Madison at ibid. 96 (". . . no government can exist unless its powers extend to make provisions for every contingency") and *The Federalist* nos. 23, 31. See Brutus VII, 2.9.88–90.

40. Madison: "In order to judge properly of the question before us, we must consider it minutely in its principal parts. I conceive myself that it is of a mixed nature; it is in a manner unprecedented; we cannot find one express example in the experience of the world. It stands by itself. In some respects it is a government of a federal nature; in others, it is of a consolidated nature. Even if we attend to the manner in which the Constitution is investigated, ratified, and made the act of the people of America, I can say, notwithstanding what the honorable gentleman has alleged, that this government is not completely consolidated, nor is it entirely federal." Elliot III, 94. Cf. *The Federalist* no. 39, 253–57.

41. Madison did not give it a name. Corbin suggested "a representative federal republic, as contradistinguished from a confederacy." Elliot III, 107. On the question of names see above Martin 2.4.43 n. 12. Federal Farmer I, 2.8.10 n. 9.

42. Here and in the remarks following, Henry is replying to arguments made by Randolph on 9 and 10 June. Elliot III, 187–207. Cf. references in Federal Farmer IV, 2.8.50 nn. 38–40.

43. Randolph, Elliot III, 204–5.

44. Thorpe, *Federal and State Constitutions* VII, 3812–14.

45. Here Henry turns to Madison's speech on 11 June, Elliot III, 247–61.

46. See Corbin, Elliot III, 112; Randolph, ibid. 125; Madison, ibid. 256–57. Cf. *The Federalist* no. 17, 106–7; no. 27, 171–74; and Wilson, McMaster and Stone, 336. For other Anti-Federal discussions of representation see Federal Farmer II, 2.8.15 n. 11.

47. See above Brutus XI, 2.9.137 n. 89.

48. Henry replies here to arguments made by Pendleton on 12 June, Elliot III, 298–99. On judicial review see Brutus XI, 2.9.147–48 and n. 97.

49. See Randolph, Elliot III, 201; Marshall, ibid. 232–34; Pendleton, ibid. 297.

50. Elliot misdates this as 14 June.

51. Virginia Bill of Rights, 1776, sec. 1, Thorpe, *Federal and State Constitutions* VII, 3813. On the bill of rights as civic education see references in Federal Farmer XVI, 2.8.196 n. 118.

52. See 5.16.24.

53. Articles of Confederation, Art. 2: "Each state retains its sovereignty, freedom, and independence and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States, in Congress assembled."

54. Virginia Bill of Rights, 1776, sec. 9, Thorpe, *Federal and State Constitutions* VII, 3813.

55. Following Henry, Randolph attempted to reply to this criticism and was one of the few Federalists who did so. Randolph's general argument was "that every exception here mentioned is an exception, not from general powers, but from the particular powers therein vested." Elliot III, 464. See Brutus II, 2.9.30 n. 22.

Speech of George Mason in the Virginia State Ratifying Convention

4 June 1788

While Patrick Henry carried the main burden of the Anti-Federalist argument in Richmond, George Mason, the only Virginia Anti-Federalist who had attended the Constitutional Convention, provided weighty assistance. Mason's first speech, printed here, was given on the first day of the debate proper, 4 June, following George Nicholas and Edmund Randolph for the Federalists and Patrick Henry for the Anti-Federalists. It is an excellent short statement, bearing many resemblances to the more extensive arguments of Richard Henry Lee. Mason is concerned with the consolidating tendency of the Constitution, and argues that popular governments can only exist in a small territory. Under the Constitution, taxes are to be laid by persons who have neither the necessary information nor a common interest or fellow feeling with the people. Mason proposes that the general government be given the alternative of laying direct taxes only if requisitions on the states are not complied with, a proposal much discussed in the subsequent debate. Admitting that the inadequacy of representation is unavoidable in the general government, Mason insists that such a government must be given powers with a very cautious hand. He is fearful, moreover, that the number of representatives in the House of Representatives will not be increased as the population grows. It is interesting to compare this speech with the *Objections*,[1] although it should be kept in mind that the speech is directed to the first section of the Constitution and that Mason discussed other sections later in the debate.

The speech is taken from *Debates and Other Proceedings of the Convention of Virginia, Convened at Richmond, on Monday the 2d day of June, 1788, for the purpose of deliberating on the Constitution recommended by the Grand Federal Convention* (Petersburg 1788–89), 3 vols.

1. See above, 2.2.

Mr. Chairman—Whether the Constitution be good or bad, the present clause clearly discovers, that it is a National Government, and no longer a 5.17.1

confederation. I mean that clause which gives the first hint of the General Government laying direct taxes. The assumption of this power of laying direct taxes, does of itself, entirely change the confederation of the States into one consolidated Government.[1] This power being at discretion, unconfined, and without any kind of controul, must carry every thing before it. The very idea of converting what was formerly a confederation, to a consolidated Government, is totally subversive of every principle which has hitherto governed us. This power is calculated to annihilate totally the State Governments. Will the people of this great community submit to be individually taxed by two different and distinct powers? Will they suffer themselves to be doubly harrassed? These two concurrent powers cannot exist long together; the one will destroy the other: The General Government being paramount to, and in every respect more powerful than, the State governments, the latter must give way to the former.[2] Is it to be supposed that one National Government will suit so extensive a country, embracing so many climates, and containing inhabitants so very different in manners, habits, and customs? It is ascertained by history, that there never was a Government, over a very extensive country, without destroying the liberties of the people:[3] History also, supported by the opinions of the best writers, shew us, that monarchy may suit a large territory, and despotic Governments over so extensive a country; but that popular Governments can only exist in small territories. Is there a single example, on the face of the earth, to support a contrary opinion? Where is there one exception to this general rule? Was there ever an instance of a general National Government extending over so extensive a country, abounding in such a variety of climates, &c. where the people retained their liberty? I solemnly declare, that no man is a greater friend to a firm Union of the American States than I am:[4] But, Sir, if this great end can be obtained without hazarding the rights of the people, why should we recur to such dangerous principles? Requisitions have been often refused, sometimes from an impossibility of complying with them; often from that great variety of circumstances which retard the collection of monies, and, perhaps, sometimes from a wilful design of procrastinating. But why shall we give up to the National Government this power, so dangerous in its nature, and for which its members will not have sufficient information?—Is it not well known, that what would be a proper tax in one State would be grievous in another? The Gentleman who hath favored us with an eulogium in favor of this system,[5] must, after all the encomiums he has been pleased to bestow upon it, acknowledge, that our Federal Representatives must be unacquainted with the situation of their constituents: Sixty-five members cannot possibly know the situation and circumstances of all the inhabitants of this immense continent: When a certain sum comes to be taxed, and the mode of levying to be fixed, they will lay the tax on that article which will be most productive, and easiest in the collection, without consulting the real circumstances or convenience of a country, with which,

in fact, they cannot be sufficiently acquainted. The mode of levying taxes is of the utmost consequence, and yet here it is to be determined by those who have neither knowledge of our situation, nor a common interest with us, nor a fellow feeling for us:—The subjects of taxation differ in three-fourths; nay, I might say with truth, in four-fifths of the States:— If we trust the National Government with an effectual way of raising the necessary sums, 'tis sufficient; every thing we do further is trusting the happiness and rights of the people: Why then should we give up this dangerous power of individual taxation? Why leave the manner of laying taxes to those, who in the nature of things, cannot be acquainted with the situation of those on whom they are to impose them, when it can be done by those who are well acquainted with it? If instead of giving this oppressive power, we give them such an effectual alternative as will answer the purpose, without encountering the evil and danger that might arise from it, then I would chearfully acquiesce: And would it not be far more eligible? I candidly acknowledge the inefficacy of the confederation; but requisitions have been made, which were impossible to be complied with: Requisitions for more gold and silver than were in the United States: If we give the General Government the power of demanding their quotas of the States, with an alternative of laying direct taxes, in case of non compliance, then the mischief would be avoided; and the certainty of this conditional power would, in all human probability, prevent the application, and the sums necessary for the Union would be then laid by the States; by those who know how it can best be raised; by those who have a fellow-feeling for us. Give me leave to say, that the same sum raised one way with convenience and ease, would be very oppressive another way: Why then not leave this power to be exercised by those who know the mode most convenient for the inhabitants, and not by those who must necessarily apportion it in such manner as shall be oppressive? With respect to the representation so much applauded, I cannot think it such a full and free one as it is represented; but I must candidly acknowledge, that this defect results from the very nature of the Government. It would be impossible to have a full and adequate representation in the General Government; it would be too expensive and too unweildy: We are then under the necessity of having this a very inadequate representation: Is this general representation to be compared with the real, actual, substantial representation of the State Legislatures? It cannot bear a comparison. To make representation real and actual, the number of Representatives ought to be adequate; they ought to mix with the people, think as they think, feel as they feel, ought to be perfectly amenable to them, and thoroughly acquainted with their interest and condition: Now these great ingredients are, either not at all, or in so small a degree, to be found in our Federal Representatives, that we have no real, actual, substantial representation; but I acknowledge it results from the nature of the Government: The necessity of this inconvenience may appear a sufficient reason not to argue against it: But, Sir, it clearly shews, that we

ought to give power with a sparing hand to a Government thus imperfectly constructed. To a Government, which, in the nature of things, cannot but be defective, no powers ought to be given, but such as are absolutely necessary:[6] There is one thing in it which I conceive to be extremely dangerous. Gentlemen may talk of public virtue and confidence; we shall be told that the House of Representatives will consist of the most virtuous men on the Continent, and that in their hands we may trust our dearest rights. This, like all other assemblies, will be composed of some bad and some good men; and considering the natural lust of power so naturally inherent in man, I fear the thirst of power will prevail to oppress the people:—What I conceive to be so dangerous, is the provision with respect to the number of Representatives: It does not expressly provide, that we shall have one for every 30,000, but that the number shall not exceed that proportion: The utmost that we can expect (and perhaps that is too much) is, that the present number shall be continued to us:—"The number of Representatives shall not exceed one for every 30,000." Now will not this be complied with, although the present number should never be increased; nay, although it should be decreased? Suppose Congress should say, that we should have one for every 200,000, will not the Constitution be complied with? For one for every 200,000 does not exceed one for every 30,000. There is a want of proportion that ought to be strictly guarded against: The worthy Gentleman tells us, we have no reason to fear; but I always fear for the rights of the people: I do not pretend to inspiration, but I think, it is apparent as the day, that the members will attend to local partial interests to prevent an augmentation of their number: I know not how they will be chosen, but whatever be the mode of choosing, our present number is but ten: And suppose our State is laid off in ten districts; those Gentlemen who shall be sent from those districts will lessen their own power and influence, in their respective districts, if they increase their number; for the greater the number of men among whom any given quantum of power is divided, the less the power of each individual. Thus they will have a local interest to prevent the increase of, and perhaps they will lessen their own number:[7] This is evident on the face of the Constitution—so loose an expression ought to be guarded against; for Congress will be clearly within the requisition of the Constitution, although the number of Representatives should always continue what it is now, and the population of the country should increase to an immense number. Nay, they may reduce the number from 65, to one from each State, without violating the Constitution; and thus the number which is now too small, would then be infinitely too much so: But my principal objection is, that the confederation is converted to one general consolidated Government, which, from my best judgment of it (and which perhaps will be shewn in the course of this discussion, to be really well founded) is one of the worst curses that can possibly befal a nation. Does any man suppose, that one general National Government can exist in so extensive a country as this? I hope that a

Government may be framed which may suit us, by drawing the line between the general and State Governments, and prevent that dangerous clashing of interest and power, which must, as it now stands, terminate in the destruction of one or the other. When we come to the Judiciary, we shall be more convinced, that this Government will terminate in the annihilation of the State Governments: The question then will be, whether a consolidated Government can preserve the freedom, and secure the great rights of the people.

If such amendments be introduced as shall exclude danger, I shall most gladly put my hand to it. When such amendments, as shall, from the best information, secure the great essential rights of the people, shall be agreed to by Gentlemen, I shall most heartily make the greatest concessions, and concur in any reasonable measure to obtain the desirable end of conciliation and unanimity. An indispensible amendment in this case, is, that Congress shall not exercise the power of raising direct taxes till the States shall have refused to comply with the requisitions of Congress. On this condition it may be granted, but I see no reason to grant it unconditionally; as the States can raise the taxes with more ease, and lay them on the inhabitants with more propriety, than it is possible for the General Government to do. If Congress hath this power without controul, the taxes will be laid by those who have no fellow-feeling or acquaintance with the people. This is my objection to the article now under consideration. It is a very great and important one. I therefore beg Gentlemen seriously to consider it. Should this power be restrained, I shall withdraw my objections to this part of the Constitution: But as it stands, it is an objection so strong in my mind, that its amendment is with me, a *sine qua non,* of its adoption. I wish for such amendments, and such only, as are necessary to secure the dearest rights of the people. 5.17.2

1. On consolidation see Plebeian 6.11.15 n. 9.
2. On concurrent taxation power see Federal Farmer III, 2.8.39 n. 29.
3. Cf. Cato III, 2.6.13 n. 8.
4. In the Virginia Assembly, Mason had declared "that no man was more completely federal in his principles than he was: . . . that he regarded our perfect union as the rock of our political salvation"; but that after considering the new constitution he could not approve it. Rowland, *The Life of George Mason* II, 191. Cf. Henry 5.16.6 n. 18.
5. George Nicholas, who opened the debate, Elliot III, 7–21.
6. Cf. Brutus IV, 2.9.48 n. 34.
7. See replies to this argument by George Nicholas (Elliot III, 12) and Publius (*The Federalist* no. 58). For other replies see Federal Farmer III, 2.8.39 n. 29.

Address by Denatus

VIRGINIA INDEPENDENT CHRONICLE
11 June 1788

This unusually interesting composition by Denatus appeared in the *Virginia Independent Chronicle* on 11 June, while the Virginia ratifying convention was sitting. The author identifies himself as a relatively unknown foreigner and admits that the essay is imperfect; but there are several interesting points. Denatus objects to the obscurity of the Constitution and to the illegality of the proceedings, shrewdly observing that most of the harm has been done by the mere proposal. He objects to the absence of a bill of rights, since the proposed government is not in fact a confederation, where a bill of rights is unnecessary (5.18.7). His chief criticism, however—one that is in some tension with his fears for the state governments—is that the framers failed to provide for the education of the people in the principles of morality, religion, jurisprudence, and the art of war. He proposes that a series of academies be established for this purpose and briefly outlines their objectives (5.18.9–12). Fearing both adoption and rejection of the Constitution, Denatus prefers adoption with amendments, and makes the interesting suggestion that the ratifications and amendments from the states should be laid before General Washington "for him to select and make what alterations shall appear best" (5.18.15).

To the Members of the Virginia Federal Convention, collectively, and individually.

Gentlemen,

5.18.1 Happy in the enjoyment of my own reflections, the tranquility of my neighbours, and the peace and prosperity of every good man, I pass a great part of my time in solitude. At these periods, the fœderal constitution, with the criticisms of the wise upon it, made their appearance. Considering the work itself, I could not bring it within my view. To me, the commentators have bewildered the subject, and hid it from my mind, in impenetrable obscurity. After reading it three times carefully, I formed an opinion, which I still retain, and which, daily, sinks deeper into my belief. That opinion I

now lay before you, in hopes that some thought of mine, may be worthy of observation and contribute to the general good.

Men of learning and experience, judge of others with humanity. You have too much liberality, and too great a desire for the improvement of every useful degree of human study, to blame me for this address. Those who determine without reason, may think otherwise: to them I reply, 5.18.2

That all men have as great a right, either together, or in opposition to each other, to reason upon suppositions, as upon facts, and to censure the conduct of men, as to approve it; that evil may be prevented, by the fear of blame and punishment: for all men, in the same society, have a right to enquire into all opinions, to examine all subjects, to represent all grievances, to shew what laws are pernicious or defective, and to lay before the public their sentiments, agreeable to truth. Where this reciprocation is not allowed, social liberty is in a great measure destroyed.—The press is the vehicle of this intelligence—I will enjoy the privilege, and return to the matter in hand.

I object to the said constitution, generally, and specially—but, wish that may it be adopted, and if possible, with amendments.—This appears strange. Be pleased to suspend your opinions, until you hear my reasons. 5.18.3

I renounce it entirely, because, in my opinion, it was composed without any legal authority. As far as I can learn, the express purpose of the convention was, to revise and amend, the articles of the union. Instead of this, which they had law to do, they followed their own imaginations, contrary to law. Instead of repairing the old and venerable fabrick, which sheltered the United States, from the dreadful and cruel storms of a tyrannical British ministry, they built a stately palace after their own fancies, and in every convenient part of the floor, and of the foundation, securely planted the seeds of monarchy. In the equity of things, it avails nothing, to say, if the people do not like it, they may let it alone. The innovation, and the injury to public justice, is still the same. Had they preserved only one article of the union, and built the present constitution to it, the objection of innovation would be unreasonable: But they have done what you know. A more fatal innovation may be made at a future day, for as Junius says, "one precedent creates another, they soon accumulate and constitute law—What yesterday was fact, to-day is doctrine—Examples are supposed to justify the most dangerous measures, and where they do not suit exactly, the defect is supplied by analogy."[1] 5.18.4

Supposing the above objection had never existed, I remonstrate against the constitution, because, to me it appears incomprehensible and indefinite.[2] For these divine attributes, its pious friends, say, by way of encomium, that it is a gift from heaven—Such observers know very little of gifts from heaven: but enthusiasts must rave. I will venture to make a bold observation here[:] I think the sun never shone upon a man that could take it within his view—No being, that we have any knowledge of, but the Deity, 5.18.5

can see through it—God, the first cause of all things, sees through the whole down to the final effect.—Contracted man, takes the effect, and struggles up to the cause; then, along the steps he has ascended, looks down to the effect again—This is the way that mechanics regulate their ideas.—A millwright stands at the water-wheel, and mentally sees the cause and effect of every movement in a complicated flour-mill, regularly on to the meal-trough—he then understands the machinery—If he cannot see, regularly along to the meal-trough, he does not understand it.—The water, is the cause of every movement—The mechanic knows how every thing will happen—The constitution, if adopted, will be the cause acting upon the conduct of men and nations.—And where is the man who can see through the constitution to its effects? The constitution of a wise and free people, ought to be as evident to simple reason, as the letters of our alphabet—This constitution I think is calculated for men of high monarchical principles, and to swallow up the constitutions of the different states.

5.18.6 Human nature ever hath, is, and will be the same, while this world continues under the same divine law.—History in all ages, affords instances of this truth too shocking to be mentioned. Let any man examine his own mind, and he will discover a mixture of democratical, aristocratical, and monarchical principles; and perhaps I would not be far wrong, to add, despotic and tyrannical.—Let whoever doubts of this, turn his attention sharply, to any man he is acquainted with.—Suppose then, the simile is directly in point.—That an uncommonly strong man possessed of every implement of war, and thirteen weak men, but denied the use of any weapon of defence, were to receive a grant of lands, in some uninhabited part of the world, and by mutual agreement, proposed by this same strong man to be governed by him, in such a manner, that no matter what any of them did, or might desire to do, for the happiness of all,—it could be of no effect, unless it agreed at that time with his peculiar cast of mind, because, not *their* voices, but *his*, must be the *supreme law of the land*.—Would not these thirteen men be very simple.—And if this mighty strong man would twist their heads off some day in his wrath—Is it not what might be naturally expected? I'll tell you how he would act. Common decency, and the shame which naturally attends the outset of an unjustifiable course of life, would induce him to exercise in conjunction, those attributes of his soul, which were the purer parts of democracy, aristocracy, and monarchy. This time would be the happiest of their days.—By and by the latent qualities of power, and hatred of restraint, having gathered strength, from time, and conscious superiority, would bury democracy, and incline him to move the land mark a little. The people remonstrate against the encroachment—The aristocrat, makes a parade of bombastical wisdom, says the land-mark was not evidently fixed upon the face of the ground, but only ideal—The people seem satisfied—He studies their imbecility, and moveth the land-mark a little farther.—The people exclaim against this violation of plighted

faith—By this time he has become a monarch in his own intentions, claps his hand on his sword to unarmed men, gives a stamp, and moveth the land mark farther still.—The people exclaim to heaven against him for redress, and say, that to each man he promised to *guarantee* the full possession of his property—Guarantee! says the tyrant, true I did, but you see now, I do not choose to do it, and where is the power to compel me? Heaven is neuter in this second dispute.—The genius of real liberty, who had waded through seas of blood to crush oppression and licentiousness, whispers these to unhappy men. The tyrant perceives the conference, draws his sword, and pronounces the following words—You see I have the command of every weapon of war. I am a man mighty in battle: You are destitute of any thing to defend yourselves. I have every necessary for two years; you can command nothing; and if you do not quietly relinquish the whole of your possessions, into my management, before the end of twelve months I will sacrifice you as a striking example to succeeding ages, that those people who inconsiderately resign their natural rights into the hands of others may expect the same fate.

I object to it also, because, it appears to be a huddled piece of work: and 5.18.7
(that in the general bustle) they forgot to put a bill of rights to it. A bill of rights! say Mr. Wilson and others, to confederated powers, is unnecesssary[3]—very truly, to powers properly confederated, but this is no confederation. It is a national government, i.e. through a little time, the incroachment will so prevail, that the fœderal constitution will expunge entirely the state constitutions—It appears to be a confederation now, but the monarch who is asleep in its bosom, at a convenient time, will awaken with a vengeance!—There would be no need of a bill of rights, were the states properly confederated. The land-mark clearly drawn between the powers that give, and the power given:—And where the remaining parts of the powers that give, are ever to be held sacred by the power given. The remaining parts of the powers that give, or the residue, of our state constitutions, would be a bill of rights, to the power given, or the fœderal constitution. Had this distinction been clearly fixed, so as to prevent any future controversy, the constitution in question, would have been a glorious, and an immortal example of human wisdom. But alas! this is not the case—There is no barrier to the power of the fœderal constitution. It will easily overleap our state constitutions with impunity. When this comes to be the case, and the fœderal constitution sovereign in all things, we ought to have a bill of rights; to save us from oppression. The want of this, is of an alarming nature, and I hope will be one of your amendments.

Had the creator of the universe thought proper to form mankind without 5.18.8
selfish and dissocial passions, I think I can maintain, that we would be happy, and in little need of human government. Reason, or the internal voice of infinite wisdom, would be the sole conductor of man.—But for purposes best known to this almighty sovereign of pure goodness and order,

we are subject to many jarring propensities. Among these, vanity, ambition, and the love of riches, are not the least.—While reason and conscience can confine the passions, their action and re-action on each other, constitute human happiness. But when they overcome reason and conscience, they produce our misery. To guard against this misfortune, as much as human foresight could discover, ought to have been the chief business of the late fœderal convention.[4] This necessary and heavy part of the work is not mentioned in the constitution, and for this reason I object to it—Some will say this is no objection—It would have been simple in the convention to debate on preventing those things which have no being, and which, if necessary, may be done by Congress at a future period. I may be wrong, but in my way of thinking, it is an objection, for the source of all the revolutions and calamities that ever will befal the United States of America, lie dormant in the human mind this very day. The prevention of these misfortunes, which will flow from the passions, instead of being utterly neglected, ought to have employed the most solemn moments of the convention, and ought to have been the point, to which all their views should have tended.

5.18.9 Here it may be asked "and pray, Sir, what do you wish should have been done?" Far be it from me, so contracted in my views and experience, to say absolutely, that any thing should have been done.

As I have, I will continue to give my opinion as the constitution of a free people ought to be formed in the best possible manner for the happiness of them, and their posterity, it ought to contain some mode, rivited through its very essence, for the present and succeeding ages, to be educated in the principles of morality, religion, jurisprudence, and the art of war. This is a duty which the framers of a constitution owe to posterity.—For the neglect of which, by men so famed for wisdom, very few excuses indeed, can be admissable—The first, or second article of the said constitution, ought to contain something to this effect—That as soon as possible, academies shall be established at every proper place throughout the United States for the education of youth in morality; the principles of the christian religion without regard to any sect, but pure and unadulterated as left by its divine author and his apostles: The principles of natural, civil, and common law, and of our constitution: And the art of defending and conquering nations in battle, either by land or sea—These academies to be regulated from time to time by Congress, and their establishment to be perpetual.[5]

5.18.10 As man is an accountable being, to his creator and to his fellow-creatures, the study of morality would enable him to act consistent with his duty to society, and the study of religion, with his duty to God. I will venture to affirm, that was this mode established we would have fewer law suits, less backbiting, slander, and mean observations, more industry, justice and real happiness, than at present. Says a pious writer, "be careful not to neglect religion in the education of your children, in vain will you endeavour to conduct them by any other path: If they are dear to you, if from them you

expect to receive credit or comfort from religion must be derived their happiness and your own."[6] Another elegant writer observes nearly in the same manner, speaking to a father of his son. "Teach him science, and his life will be useful. Teach him religion and his death will be happy."[7]

5.18.11 The study of jurisprudence would prepare our young men, and our old men, for every department of public business. They would be qualified, in point of education, for every office at home, and as their virtues and genius merited, would be appointed consuls or ambassadors abroad. Far other is the case now. How absurd it is, to send men to do the business of which they are ignorant. To make laws, and unacquainted with the principal ties of social union. If this remark is thought hard, I appeal to our late acts of Assembly, and to the sufferings of the nineteen-twentieths of our people. The multiplicity of our jarring laws—Their inconsistency in some instances, with common sense—The honest men being pointed at by the Assembly, ever since the revolution—The struggle for instalments—The execution law—The perspicuity of the district law, and to crown all the tenacious continuance of the *holy six months law*—I think ought to cool the enthusiasm of every anti-fœderalist.

5.18.12 Were these academies established, and study of the art-military, and the militia exercise, would qualify us for crushing at once, every enemy to our government, foreign or domestic. Like the Roman generals we would have the statesman and the warrior united in the same man—Our people educated in this manner, at stated times, would put the theory of fortification, gunnery, and manouvering of armies into practice. We would march, encamp, have mock battles and sieges, go through every part of the military duty as if in real war, then return home, prepare our arms for a moments warning, and each man fall to his occupation as before. This would guard against effeminacy: It is the natural way to enjoy the sweets of society, and to prevent any nation, or people from disturbing our quiet. We see in private life, that the man who wishes to hector over another, is more sound than substance, and when he meets with manly opposition, fights at a distance. He does not turn out hand to hand, alone, and on equal terms, as a brave man ought to do, but fights most valiantly, throughout the regions of fancy: So it is in nations. Would Portugal choose to declare war against France or England? Would any of the powers contiguous to Russia, choose to declare war against that empire? I think they would not, because they would be conscious of having to contend with a superior power, and according to my way of thinking, if the United States of America were wisely cemented together, as one people and properly educated in the sciences of morality, theology, jurisprudence, and war, the greatest of the forementioned powers would not dare to insult either our citizens or our ships. The great art in this business would be, to regulate the militia in such a manner that neither agriculture, industry, commerce, nor the military spirit should suffer. I think Congress could soon complete this organization. What occasion then, would we have for a

standing army? That dead weight upon the heart of nations! That disgraceful and wicked instrument in the hands of conscious worthlessness and guilt! High or low—rich or poor—citizen or governor, subject, king or president, the good man's character will ever be his guard—The wicked ought to suffer.

5.18.13 How fluctuating are the dissocial passions of men! These are the cause of the rise and fall of nations and the changes of government. Some time ago, the regal power was sovereign in America—Since, democratical republicanism now nearly anarchy, and without great care, it is not unlikely but we may soon experience a change worse than either. These revolutions are a lesson, to be cautious, of what powers, and of what time, the president of Congress should be appointed—He ought by no means to command the forces of the United States, without leave from Congress—nor to be eligible successively—and never after being twice in office—none of his brothers, uncles, sons, first cousins—nor father ought to fill the same post during his natural life—after governing he ought to be governed, to prevent his despotic principles from making head. The conduct of Dejoces, Julius Caesar, Oliver Cromwell, and what Hannibal might have done, had he returned victorious from Italy to Carthage, and also, how the present empress of Russia ascended the throne, ought ever to be held in view when the powers of this president are in contemplation.

5.18.14 The above in part, are my objections to the fœderal constitution, each of which, is a genus. As I am a warm friend to the union, and to justice among its individuals—I will object no more—My sincere prayer is, that it may be amended, and then adopted—It certainly has a great many excellent qualities, and as many bad ones. The ambiguity of the whole, is its greatest fault. I remember, in a public court yard, to have heard a baptist preacher make three score and sixteen objections to it, and grunt and condemn it from end to end—and within five minutes a practitioner of the law, to defend it most vociferously from end to end.—A blacksmith at my elbow, pitied them both—I really thought then, what I still think, that we all knew very little about it.

5.18.15 If we adopt it without amendments, the seeds of our ruin are sown. If we reject it, disunion, the highest injustice, perhaps anarchy, and thousands of calamities will be the consequence—The people are impatient and will not consider things cooly—In my opinion, the safest way would be, to adopt it with amendments. When the whole, or nine states have come into the measure—to lay the ratifications and amendments from all the states, before General Washington, and from the whole, for him to select and make what alterations shall appear best—He certainly knows the natural rights of mankind, the general interests of this country; its natural and artificial productions, and upon the scale of nature with other nations to what they may become, and also, this genius of the people, better than any other man. And

whether his amendment would agree with speculative reasoning, or not, his name to sanctify the whole.

Well knowing I address men whose souls are expanded, by education, humanity and experience, I am at ease, with respect to the imperfections of the composition, either on account of its sentiments, or its language—I am subject to human frailty; but mean well. As I am not known to some, and but very little indeed to any of you, it is no matter who or what I am—If this address can have the smallest good effect I will be happy. This much however I will observe, that I am a foreigner, and with yourselves may say, of the same ancestors, the same language, the same government, the same religion, and the same spirit we are all branches of the same tree. You towards the trunk, I towards the top: and if the branches towards the top are longer in making their appearance, than those towards the trunk, is there any essential difference in their qualities? Are they not homogeneous? Do they not collectively unite to the utility and beauty of the whole: And do we not conjointly, contribute to the glory of that power who gave us existence, to dwell in peace, harmony, and brotherly affection upon the same land? 5.18.16

There is one thing, particularly, which I beg leave to observe—I hope it will be of more benefit than all I have written. You are now on business of the most awful nature. Upon your wisdom, Virginia rests her future happiness. Let not then, any degree of party-work nor any kind of fallacious arguments, destroy the patriotic emanations of the soul. It is noble, it is great and glorious to acknowledge mistakes. Be like brothers, and we will be happy. All cannot be right, perhaps not one, throughout the system he may have in view. Gather the best parts of all, together, and throw the rest away. Consider the imperfections of human knowledge, and how often the greatest men have erred. Aristotle and Des Cartes themselves have gone astray in some things. Let social affection shine through all your conduct. Advise like brothers, but do not debate like foes. With reverential awe view your chairman as your father, studying the happiness of his children, and may he who presides over the councils of good men give you wisdom and unanimity. 5.18.17

Denatus.

Buckingham, May 27th, 1788.

1. *The Letters of Junius* [Woodfall's Junius], author's dedication. See references in Republican Federalist, 4.13.15 n. 11.
2. Cf. *The Federalist* no. 37, 234–37; no. 31, 193–95. See Cato V, 2.6.34 n. 21.
3. James Wilson, Address to the Citizens of Philadelphia, 6 October 1787. McMaster and Stone 143–44; see Federal Farmer IV, 2.8.50 n. 39.
4. Cf. *The Federalist* no. 15, 95–96.
5. On proposals for a national university, see David Madsen, *The National University: Enduring Dream of the U.S.A.* (Detroit 1966). Cf. Turner 4.18.2.
6. The source of this quotation has not been found.
7. The source of this quotation has not been found.

Letter from A Delegate Who Has Catched Cold

VIRGINIA INDEPENDENT CHRONICLE
18 and 25 June 1788

This essay was addressed to the chairman of the committee of the whole (George Wythe) of the Virginia ratifying convention, then completing its deliberations. Its author presumably had to leave or could not attend the convention. The general quality and some of the arguments of the piece are similar to those of Denatus, although the specific proposals are different. The author is clearly a minor Anti-Federalist figure. He seems, indeed, only a slightly reserved Federalist; but he is emphatically Anti-Federal in his concern to maintain the purity of the beginnings. He proposes that the Constitution be adopted without amendments for a certain period, at the end of which there should be a general revision and correction. The proposal is thin and not worked out, but it is defended (particularly in the latter half of the essay) with sensitivity to the peculiar needs for stability in republican government (5.19.9–12) and a good statement of the value of a bill of rights in preserving the people's attachment to their rights and their country. This bill of rights should be "so expressive, so clear, and at the same time so short, as never to require either comment or interpretation" (5.19.3).

18 June 1788

To the Honorable the Chairman of the Committee in Convention at Richmond.

5.19.1 In resuming at this interestant period all that has been written and said on the new constitution, and removing what passion and particular interest has suggested, it is naturally to be concluded,

1st. That our actual confederation is defective from a want of energy, which excludes unanimity, regularity, and celerity in its interior and exterior regulations, and consequently cannot preserve, either our tranquility, or our liberty, and exposes us to the invasions, or to the contempt of foreign

nations, which foresaw, with reason, our divisions and our next annihilation.

2d. That a new government is indispensable for remedying the defects of this, which if it be well organized, will encourage agriculture, and consequently raise the value of our lands, encrease our trade, and consequently augment our riches and our credit; re-establish the order and the exactness, and consequently, the confidence and reputation, and will people this continent with foreign emigrants, who to enjoy the advantages of our government, will bring in with them, arts, manufactures and industry.

3d. That the proposed constitution which has already been accepted by several states, has many of the qualities essential to our prosperity; but in remedying the weakness and defects of the old, it is not itself entirely free from them; those defects are of a very alarming nature, since they expose the sovereignty of the state and the liberty of the individual, and may reduce us to the debased situation of European republics.

4th. In any human performance imperfections are inevitable, and more essentially in the difficult task of forming a plan for to govern a people without endangering their liberties; and we must confess, my dear countrymen, that we planters who form the body of the people, though so essentially interested in this plan, we cannot be competent judges of its theory, when we find the learned and well skilled in this business differ so widely from one another; we must not set out in pursuit of ideal perfection, for we would find that we had been in search of an imaginary or an unattainable object; we can only in our capacity, judge of the effects and results of it by experience; but in making it, we should solely and essentially bend all our attention to the preservation of the inestimable right of having in our power at all times to new model our government according to circumstances, and to vary its course at certain periods; since it is really in this power that the sovereignty of the people consists.

Upon the above principles, which prove the necessity of the adoption of this plan, the impossibility in which we are, of discovering its imperfections, otherwise than by experience, and in fine the dangers to which our rights and liberties will be exposed by its adoption; our situation is plainly a very critical one. 5.19.2

Amendments are proposed; but if we were to make any, the other states have certainly the same right, and we are not to suppose that these amendments would be totally devoid of all partial views towards local interests, which have been conciliated as much as possible, in the general convention, in the presence of all the parties concerned. 5.19.3

Those amendments should be prematured, contradictory, they should carry discussions and slowness dangerous in this circumstance, and even being unanimously agreed, they could not preserve us, from the imperceptible usurpations of power and of the unexpected defects, forgetfulness and mistakes, than [that?] the experience alone can demonstrate; those 5.19.4

palliatives should prove only, the weakness and defects of our government, who since the moment of its formation, is subject to particular amendments, and of a model who ought to be short and intelligible at every body, it should be a difficult and complicated work, subject to commentaries and interpretations in all senses; in fine, a true labyrinth whom the lawyers alone should know the way. But let me ask any one of these proposers of amendments, if he were to make what alterations and corrections he thought proper in this plan, whether it would then be free from all the defects and inconveniences it is now reproached with, or if after such alterations, he could guarantee to the people of America, a government by which their liberty, and happiness, would be secured to them. Let them for a moment lay aside their vanity and consult only their honor and conscience, and then answer in the affirmative.—I will put the same question, in the name of the people, to those who recommend the adoption of this plan without amendment! can any of them under this plan guarantee to us our privileges and liberties—if either of these parties were alone to be answerable for the event they engaged for, they would hesitate without doubt, in entering into such a guarantee.

5.19.5 In that painful situation, and obliged to take a resolution, I put myself above all apprehensions of being accused of presumption in giving you my opinion; I deliver it with zeal and confidence, because it appears to conciliate the interests of these two opposite parties. I propose the adoption of the new constitution without amendment for a limited term, at the end of that period, let it be revised and corrected, and this without affecting the 5th art. of the constitution, which provides reforms whenever found necessary.

5.19.6 That mode appears such as would be agreed to by Congress, since it maintains the union for a term of 6, 8, or 10 years, and it would probably be approved of by the other states, since the minority in their convention required amendments and the majority wished for them, and all they accepted it in its present form, only from an apprehension of the mischiefs, which a disunion would necessarily occasion; they will be with pleasure a period fixed and convenient for correcting the faults it is now reproached with, as well as those which may hereafter be discovered.

5.19.7 This precaution for revision will awake our attention and oblige us to invigorate our government at that stated period; it not only enables us to operate the corrections wished now; but all the other foreseen and unexpected, before they be rooted and naturalized with our government; that enables us to enjoy directly the benefits of that new constitution, without apprehending the inconveniency of the actual particular and partial amendments; for to leave that reform undecided and for an unlimited time, as it is indicated by the 5th art. of the constitution, it may be delayed, or drawn back by the very powers granted by the people, or will take place only, when abuses kept up by leaders, will be too much rooted and cause a

revolution! besides a reform becoming indispensable by the defects and vices of the constitution, should not subject to more dangers, if it were suddenly to take place, than if it were to be generally expected and supposed to be nothing more, than a customary revision; such an institution would resemble that of the censors of Pennsylvania, who take place every seven years, which distinguishes the constitution of this state and cannot be too much commended:[1] and farther the time being fixed for that revision it would make our rulers more careful and circumspect, than an uncertain epoch.

If our present confederation which is visibly defective, has found so many defenders, and give such trouble for exchanging it against one certainly better, what difficulty and dangers shall we meet with, in amending the new, if a term for such reform is not pointed out. 5.19.8

If all the nations of Europe the more civilized, were in possession of such a regulation, they should not lament certainly under ridiculous and barbarous laws, institutions and customs, which are in contradiction with their actual morals and their learning.

By A Delegate
who has catched cold.

(*To be concluded in our next.*)

25 June 1788

(Concluded from our last.)

Sir,

As republican governments admits of few abuses in their state of original purity! but when they do exist, they are more striking, and visible by their contrasts, and the government then possesses more energy to effect a correction; as societies encrease, grow old, and acquire perfection in appearance by their population, commerce, arts, riches and luxury, then abuses and vices multiply, subdivide and are insensibly confounded with one another, each of them in detail becomes less striking but by their union, their pernicious effects, are discovered and removed with more difficulty, because, the government at best has only retained its first situation; and has not held the same progressive tenor with the society; hence springs the shocks and revolutions by which, either the people overturn the government, or the government oppresses the people: it is then necessary to vary its regime at periodical epochs: all things in nature is subdued by periodical order, heavens and earth have their precise revolutions, and ourselves are subdued for our wants at that general law, we follow it in all our actions and 5.19.9

business to maintain the good order, thus, we ought to observe it in this great and important transaction.

5.19.10 It is an incontestible fact that all governments, how perfect soever their organization, have been at last destroyed; even that of the Jews, which they boast to have held immediately from God himself, have obeyed this general law and has not preserved that people from dispersion, etc. etc.

5.19.11 Some authors after having rapidly glanced over all the governments which have existed to this day, have imagined that the political bodies resembled the human body in these circumstances, of infancy, growth, decline, and dissolution; there are others who have considered this comparison as rather ingenious than pertinent, because the political bodies being composed of individuals continually succeeding each others, in the same order, may be always youthful and last as long as the world, were it not deranged by great and untoward events! but without examining the truth or falsehood of these reasonings, we may be easily convinced, that though it be out of the reach of human prudence to guard a government against these untoward events, it may at last by renewing and giving it a fresh spring at stated periods, prevent or retard these interior causes, which may prey upon its vitals, and cause its natural death: Probably this mean of reforming themselves and of recovering their pristine vigor, might have brought down to our days, those nations that have now disappeared; we have now in our hands this happy remedy, we apply it at this crisis, and our principal endeavors should tend to preserve to us the use of it.

5.19.12 It is very lamentable to view the inconstancy and contradiction of our several legislatures, not only against one another, but with Congress, not only in the forms, but in the principles of their regulations, every year brings on reforms and amendments which require the same thing the following year; this continual change of system in administration, destroys that very confidence, which it ought to promote, and far from improving them, it augments the disorder of public affairs, as well in commerce as in finances.[2] Another inconveniency not less considerable attends those legislatures which cannot, or will not, either through prejudices and systems, or by haughtiness and presumption, be reformed, but with difficulty, at very distant periods, and as it were by a shock; both these extremes are dangerous, we shew the example of the one, the Europeans of the other: the resolution that we shall take by our new constitution, in investing the Congress with powers necessary for the great object of general administration, is a great step towards perfection, for to have good and uniform laws, and the clause that we shall add for its duration, for to revise it to a fixed period, is a prudent precaution, for to have those laws always suitable to our circumstances, and will prevent us from falling into either of those extremes.

5.19.13 As we may propose and recommend amendments to Congress, and to avoid the reproach of making them either partial, or numerous and con-

tradictory, let us be satisfied with presenting a bill of rights of the people of America, in such general terms; so expressive, so clear, and at the same time so short, as never to require either comment or interpretations. Nothing that has been yet laid before the public is satisfactory; may it be written by men conscious of its necessity and of the dignity of their subject, that it may be an honorable introduction to the constitution of the United States of America.

Our rights as a free people, were fixed and fully expressed at the head of our different constitutions. Why then should they not be placed also at the head of this general fœderation, which may supercede these? Some states, it is true, have no bill of rights, but it is an additional reason for inserting one in the fœderal; since as Americans their rights are the same, and making a greater concession of those rights to the fœderal body, that precaution is at present indispensible: it is not possible now to be ignorant of our rights, and to contest them, being so near of the glorious epoch of their acquisition; but it will be attempted in the future time and the history of all ages announce that they will no more be spared, than those of all the people who have preceded us, if we have no more care for their preservation. 5.19.14

In considering all peoples existing on the earth and the nations who have preceded them, it is not possible to sustain, that they have been reduced in that state of servitude with their full consent and by the free concession of their rights! but in contrary it is certain, that they have lost them imperceptibly and have been subjugated by gradation, or by a violent revolution occasioned by anarchy; if they had well known, established and maintained their prerogatives and their government, they should have prevented those two extremes, who have constrained them to creep under a chief, and becoming conqueror, or conquered people. 5.19.15

Those rights characterise the man, essentially the true republican, the citizen of this continent; their enumeration, in head of the new constitution, can inspire and conserve the affection for the native country, they will be the first lesson of the young citizens becoming men, to sustain the dignity of their being; in fine the publication of those prerogatives has drawn us the envy and the admiration of all Europe, and being the preamble of our fœderal constitution, they may be the means of a considerable emigration to this continent.[3] 5.19.16

We shall consider the new modelled Congress, as the general arsenal in which we deposit our arms and our ammunitions, our bill of rights, if accepted, will be the authenticated act of deposit, and the limited time for revision, will serve to verify, whether they have been kept in good order and whether the trust has not been abused. 5.19.17

Under a firm persuasion and conviction of the necessity of an energetic, uniform and regular government, to which we must necessarily yield up a part of our states sovereignties, I cannot discover, with my feeble under- 5.19.18

standing, any other means, that this sacred palladium that can effectually secure us and our posterity from the odious tyranny of an artistocratic government, nor any thing less, than the adopting this new constitution to save us from anarchy and annihilation.

A Delegate
who has catched cold.

1. See Pennsylvania Convention Minority 3.11.8 and n. 3; cf. *The Federalist* no. 48, 336–37.
2. Denatus (5.18.4) expresses a similar concern. Cf. *The Federalist* no. 49.
3. See Federal Farmer XVI, 2.8.196 n. 118.

Sentiments of Many

VIRGINIA INDEPENDENT CHRONICLE
18 June 1788

This essay in the name of "Many" contains a discussion of the value of a bill of rights (5.20.2–3) in which the author is, like Denatus (5.18) and A Delegate (5.19), concerned with the need to provide a brief and popularly comprehensible statement of the fundamental principles of the government. The essay is also of some interest for its discussion of the provision making treaties the law of the land (5.20.3–4), its reference to Publius in this respect as "the oracle of the fœderalists" (5.20.3), and its objection to permitting the continuation of the slave trade for twenty years (5.20.6).

Mr. Davis,

The public is under great obligations to you, for the fund of entertainment and instruction, your paper has afforded since the publication of the proposed fœderal constitution: the most illiterate may now discern the usefulness of the press in a free state. It gives all the people an opportunity to learn to be wise, to choose or refuse, in an important affair: indeed it is the noblest exhibition, the new world has yet witnessed. Let us therefore seek after truth, no matter where, or from whom. 5.20.1

We see our way now more clearly than at first outset; several of our objections have been ably answered. But so attached are we to old forms, or from some other cause, we are not yet satisfied, with the want of what is called a BILL of RIGHTS.—What, if the expression was varied, and it should be termed *incontrovertable truths, or fundamental laws*—Why might not the new constitution be prefaced by such an instrument of writing? The use we would wish to see made of it, is a resort, or recurrence, a test, to try all the acts of the national legislature by.—It is known that the bulk of the people do not understand abstruse, or lengthy political disquisitions. The fundamental laws of a nation, might be expressed in a few articles, and those in a few words, yet plain, and pithy, to which the people would pay a similar deference, as to the decalogue.[1] 5.20.2

5.20.3 The explanations we have seen respecting the trial by jury, the freedom of the press, election of representatives, rotation in office, and responsibility to constituents are plausible, but not altogether satisfactory.

But how will the FREEHOLDER, or any other candid writer, take to convince us, that it is right that the *treaties* should be made the *supreme* law of the land.[2] We have hitherto been taught that all laws binding on the community, ought to be made with the consent of the people, or by that of their representatives, in their legislative capacity. But under the new constitution, Congress is to enact some laws, others to be enacted by a part of Congress, or one branch of the legislature, and these to be made *supreme*. We apprehend the Freeholder, or even Cassius,[3] will see some impropriety in this. PUBLIUS, the oracle of the fœderalists, in his paper no 15—says that treaties even among civilized nations, "scarcely are formed, before they are broken, giving an instructive, but afflicting lesson to mankind, how little dependance is to be placed on treaties, which have no other sanctions, but the obligations of good faith; and which oppose general considerations of peace, and justice, to the impulse of any immediate interest or passion."[4] The whole of the paper is worth the reader's attentive perusal. Would a sensible and free people, covet to have the supreme laws of their land, impressed with such *"lovely features."*

5.20.4 Since the year 1776, the United States, by commissioners acting under their authority, have made a variety of treaties, with different nations of Savages; some of them if considered as law, will destroy the private rights of individuals without an hearing; infringe the sovereignty of States, are contradictory one with another; and in not a few instances manifestly unjust. Can the Indians give us constitutional security for the observation of stipulations on their part? What embarrasments must the Judges of the fœderal courts be under, when they come to pronounce, what is *the supreme law of the land*. They are either to be accessaries to a multiplicity of wrongs, or endure the imputation of trifling with the obligations of a solemn oath. Such generally are the consequences of ex post facto regulations.

5.20.5 Treaties, no doubt, are engagements of a solemn nature, and it is interesting to humanity that they be faithfully observed, provided the sanctions to oblige the parties to do so, are reciprocal. At all events, if PUBLIUS's account of them are true, they are improper matter, to make part of a code of laws, for the local administration of the national affairs.

5.20.6 In a serious hour, and in the presence of the Governor of the Universe, what reasonable excuse can then be made, for permitting, and that constitutionally, depredations on a distant and inoffensive people, for the term of twenty-one years.—Seemingly in the same spirit, and with the same narrow policy, is the clause expressed ambiguously for the admission of NEW STATES into the Union. Art. 11 of the confederation is expressed in a different style.[5]

There are many good things, excellent regulations, set forth in the new plan, that will long be respected by a grateful, and enlightened people. But when we turn our eyes to the dark side of the picture, a sigh, a tear, a lamentation, may be excited, for the imperfections that beset the best of men, and that attends the wisest institutions, whilst we are destined to act on the present theatre of human affairs. 5.20.7

Such are the sentiments of
Many.

May 13, 1788.

1. See Federal Farmer XVI, 2.8.196 n. 118.

2. The reference is to a long Federalist essay by A Freeholder, which appeared in the *Virginia Independent Chronicle*, extraordinary edition, 9 April 1788. (A shorter essay appeared on 23 April.) A Freeholder argues that the opponent of the Constitution "must acknowledge, even in the height of his jealous frenzy, that if Congress can not enforce the observance of her treaties, no nation will treat with her, and that the situation of America if ever involved in war would then be truly awful."

3. Cassius criticized Richard Henry Lee's letter to Governor Randolph, of 16 October 1787, in a lengthy essay published in the *Virginia Independent Chronicle* in April 1788. (See Brutus [Virginia], 5.15.) In the first part (published on 2 April) he argued that all countries regard treaties as part of the law of the land and that the power to make treaties has customarily been exercised by the executive, so that senatorial participation is an added safeguard.

4. *The Federalist* no. 15, 94.

5. "Art. 11. Canada, acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to, all the advantages of this union; but no other colony shall be admitted into the same unless such admission be agreed to by nine states." Art. IV, sec. 3 of the Constitution provides merely that "new states may be admitted by Congress into this Union," with the proviso that no new state shall be formed in or of an existing state without that state's consent as well as that of Congress.

James Monroe
Some Observations on the Constitution

1788

In 1788 James Monroe was a rising young political figure, having served in the state legislature and in Congress, where he held a moderate position on the question of extending the powers of the general government. Under the new government he was to serve as senator, diplomat, governor of Virginia, Secretary of State, and finally fifth President of the United States. In an unfinished autobiographical sketch, Monroe described his reactions to the proposed constitution. Stuart Gerry Brown, who edited and published the sketch, writes:

Its powers transcended the limit which he had contemplated, but still he entertained doubts whether it would contribute most to the interest of the union to adopt it, in the hope of amending any of its defects afterwards, or to suspend a decision on it until those amendments should be previously obtained. When elected to the Convention, he expressed those doubts to his fellow citizens of the county before the poll commenced, but, having formed his opinion in favor of the latter course before the meeting of the Convention, he addressed a letter to them to that effect in which he stated the objections which had occurred to him to the Constitution. This address, being imperfectly printed, was not generally circulated; he communicated, however, copies of it to several distinguished characters and among them to General Washington, Mr. Jefferson, and Mr. Madison, who viewed it with liberality and candor. We see a copy of that which was sent to Mr. Jefferson in the Library among the collection of pamphlets transferred by him to the United States.[1] From General Washington an answer was received which is published in the documents attached to this work.[2] In the Convention, Mr. Monroe took part in the debate and in one of his speeches entered fully into the merits of the subject. We find that he was decidedly for a change and a very important one in the existing system, but that the Constitution reported had, in his opinion, defects which required amendment and which he thought had better be made before it was adopted.[3]

In a letter to Jefferson, Monroe explained that, while he had strong objections to the Constitution from the outset, he "had no inclination to enlist myself on either side, made no communication or positive declaration of my sentiments until after the Convention met." He enclosed a pamphlet ad-

dressed to his constituents, "but the impression was delayed so long, and so incorrectly made, and the whole performance up on reexamination so loosely drawn that I thought it best to suppress it."[4]

One of Monroe's editors, pointing to the tension between Monroe's strong nationalist arguments and his opposition to the Constitution, contends that while the dilemma was genuine, Monroe's essay "is a skillful example of 'strategic obfuscation.' "[5] It seems likely, however, that Monroe withdrew the pamphlet precisely because of the undesirable political impact it would have had. However much he may consider and give due weight to all sides of an argument, the politician is not obliged to furnish ammunition to his opponents when the time comes to fight out specific issues. In some ways Monroe's pamphlet is all the more revealing because of those very qualities that probably led the author to suppress it.

As already indicated, the most striking characteristic of the argument is Monroe's strong nationalism. He begins with a discussion of the defects of the present confederation, and his analysis is fundamentally identical with that of Publius in *The Federalist:* a league, which the Confederation fundamentally is, cannot be an efficient government; for the principle of such an organization is the interest of the parts rather than of the whole (5.21.5–12). There are only two remedies, the complete annihilation of the state governments or a partial annihilation of them with a considerable reduction of their powers. Strikingly, Monroe admits his attraction to the idea of a complete consolidation, "an idea not only elevated and sublime, but equally benevolent and humane" (5.21.12). The idea is not practical, however, because of the difficulty of maintaining democratic government over an extended and heterogeneous territory (5.21.12–14). The argument here is not perfectly clear, the difficulty being a common Anti-Federalist tension between the principle of union and the principle of the small republic.

Monroe then turns to a middle course, whereby the general government could be given those powers necessary for the safety and advantage of the whole and yet the states left with significant powers. Monroe sees clearly that this will be a new kind of government and that its success will depend on the skill with which the line between their powers is drawn (5.21.15–17, 36). He describes and advocates what has come to be known as "dual federalism" and he identifies the critical condition for the successful operation of such a system: "To mark the precise point at which the powers of the general government shall cease, and that from whence those of the states shall commence, to poise them in such manner as to prevent either destroying the other, will require the utmost force of human wisdom and ingenuity. No possible ground of variance or even interference should be left, for there would the conflict commence, that might perhaps prove fatal to both" (5.21.17). The principle is that of general and local interest.

Turning to the organization of the government, Monroe emphasizes two points: that the states should not have any part in it (5.21.17–18), and that

there should be an efficient separation of powers, including particularly a strong, independent executive (5.21.19–27) and a complete judiciary with final jurisdiction over all federal questions (5.21.28).

In the third part of the essay, Monroe lists his specific objections to the Constitution—especially the power of direct taxation, the state influence in the senate, the mode of electing and impeaching the executive, the provision for original jurisdiction, and the provision of lower federal courts (5.21.29–35).

Monroe concludes with a further discussion of the need for a balance between the general and state governments, the danger that federal contention (to some extent fostered by the new Constitution) will lead to monarchy, the danger of granting the federal government the power to lay direct taxes, and the need for improvements in the proposed Constitution. Having laid (or intended to lay) his views before his constituents, he promised that "if after a candid review, they shall appear indefensible, I will most chearfully submit to be governed by your wishes, and obey other instructions" (5.21.38).

1. This is probably the copy now in the possession of the Library of Congress, which is reprinted here. The only other known surviving copy (possibly Washington's, see note 2) is now in the National Archives. A number of corrections printed at the conclusion of the pamphlet have been incorporated here without notice, as have corrections of several additional obvious typographical errors.

2. The letter from Washington is printed in *The Writings of James Monroe*, ed. Stanislaus M. Hamilton (New York 1898) I, 349.

3. *The Autobiography of James Monroe*, ed. Stuart Gerry Brown (Syracuse 1959) 49–50.

4. *The Writings of James Monroe* I, 188.

5. Brown, in *The Autobiography of James Monroe* 6. It is interesting to note that prior to the rediscovery of the pamphlet printed here, a *defense* of the Constitution by A Native of Virginia was thought to be Monroe's pamphlet. See Joseph Culbertson Clayton's bibliographical note in this edition of Curtis's *Constitutional History*, II, 739–40. To be on the safe side, Hamilton printed both pamphlets. *The Writings of James Monroe* I, 307–99. For Monroe's views prior to the conclusion of the work of the Constitutional Convention, see his letter to Jefferson, 27 July 1787, *Documentary History of the Constitution* IV, 237–38.

Gentlemen,

5.21.1 When you did me the honour to elect me into the Convention, to decide for you upon the constitution submitted to the states from Philadelphia, I had not at that time examined it with that attention its importance required, and of course could give you no decided opinion respecting it. Other cares had unavoidably taken my attention from it. After you had reposed that trust in me it became my duty to pay it a more serious attention. Having given it the best investigation that my limited capacity is capable of, and perhaps formed in some measure my opinion respecting it, subject however to alteration when I shall be convinced that I am in an error, I should think

myself unpardonable if I witheld it from you. To you it belongs to approve or correct this opinion, for although it would give me pain to be compelled to take a course which my own mind did not approve, yet I have too high a respect for your rights, too just a sense of my duty, and too strong an impression of gratitude for the confidence you have reposed in me, to act contrary to your wishes. Under this impression I have thought proper to make to you the following unreserved communication of my sentiments upon this all important subject.

5.21.2 It will readily occur to you that this plan of government is not submitted for your decision in an ordinary way; not to one branch of the government in its legislative character and confined under the constitution to the sphere it has assigned it; but to the people to whom it belongs and from whom all power originates, in convention assembled. In this situation your present state constitution was, or should have been, formed, and in this situation you are of course able to alter, or change it at pleasure. You are therefore to observe that whatever act you now enter into, will be paramount to all others either of law or constitution, and that in adopting this it becomes in reality the constitution of the state, and binding on you as such. Whether it will absolutely annul and do away that of the state is perhaps doubtful; my own apprehension is it will not, except in those cases wherein they disagree; in these it will of course prevail, and controul all the departments of the state government, being the ulterior act of the people. You will therefore perceive it is a subject of great extent and importance upon which you have to decide, and that you owe it to your country, yourselves, and posterity, that it be well examined in all its consequences before it is determined.

5.21.3 When we contemplate the causes that might probably have contributed to make it necessary to submit to your decision the propriety of such a change in your political situation, we are naturally led into one of the following conclusions—either that the morals of the people have become corrupted—that the passions of mankind by nature render them unfit for the enjoyment of equal liberty, or that the form of the government itself under which we live is radically defective, and capable of such improvement, as will extend to us its blessings in a higher degree, and make them of longer duration. Believing firmly that the body of the people are virtuous, at least sufficiently so to bear a free government; that it was the design of their Creator in forming such an order of beings that they should enjoy it, and that it is only by a strange and unaccountable perversion of his benevolent intentions to mankind, that they are ever deprived of it, I will proceed to examine the latter hypothesis which supposes such defects in the present form, as to make a change adviseable. If we find that they really do exist, I will then proceed to suggest such remedies as will enable us comparitively to determine on the merits of that proposed to be substituted in its stead. I feel myself deeply impressed with the importance of this undertaking and am too well acquainted with my own inability, even to hope that I shall

conduct myself with propriety through it, but from a sincere desire to establish a perfect good understanding between us, and prevent the possibility of any future anxiety on this subject, I find myself constrained however painful it may be, and however ungracefully I may do it, not only to avow my sentiments respecting it, but the principles on which they are founded.

5.21.4 The present states were separate, from their first colonial establishments until the encroachments of Great Britain, compelled them into an union for their defence. But as their combined efforts soon promised to erect them into independent governments, the consideration which had united them for a time, and for the accomplishment of one object only, became perpetual, and the wisdom of their councils suggested the propriety of provisions that would secure them from like dangers for ever—under this impression they entered into the articles of confederation on the——day of——, 178 . To this instrument or bond of union therefore we are to look for the strength, or imbecility, for the perfection or demerits, of the present fœderal government. As this is the system whose defects we have to remedy, it will be proper to present to your view concisely a summary of its powers.

5.21.5 The powers which have been given by these articles of agreement or confederation to the general government are extensive. They are to be found principally in the 9th and the 6th articles, in the former positively, and in the latter negatively by a qualification of the rights of the individual states. By the 9th, the United States are authorised to make war and peace—send and receive ambassadors—enter into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislature of the respective states shall be restrained from imposing such duties on foreigners as their own people are subject to, or from prohibiting the importation or exportation of any species of goods or commodities whatsoever—establishing rules for deciding what captures shall be legal by land and water, and how appropriated; grant letters of marque and reprisal in time of peace—appoint courts for determining finally in all cases of captures; appoint courts for the decision of territorial controversies between states and individuals claiming lands under different grants from two or more states, whose jurisdictions respecting such lands have already been adjusted by the said court;—coin and regulate exclusively the value of coin throughout the United States—fix the standard of weights and measures—regulate the trade with the Indians not members of a particular state—establish and regulate post-offices—appoint all officers of land and sea forces, except regimental; make rules for their government and regulation and direct their operations—ascertain the necessary sums of money to be raised for the service of the United States appropriate, and apply the same—borrow money and emit bills of credit on the faith of the United States—build and equip a navy—agree on the number of land forces and make requisitions for the same. Provided that none of the said powers shall be exercised without the consent of nine states. By the

6th, the individual states are prohibited from sending or receiving embassies, entering into conferences, treaties or alliances with any foreign power, and the servants of the United States or individual states from holding offices of profit or trust under any foreign prince or potentate whatever—from partial confederacies without consent of Congress—from keeping up troops or vessels of war in time of peace except such as shall be approved by Congress—entering into a war with a foreign power unless invaded by an enemy—from granting letters of marque or reprisal except after declaration of war by the United States and then under particular restrictions only.

5.21.6 These articles give all the efficient powers to the United States—The 1st, 3d, 4th, 7th and 8th, although they establish some fundamental principles on which the government is to move, and especially the 8th the rule of apportionment, yet they give no real power; they are rather the rule by which the power already given is to be used than that they give any themselves. The 10th, 11th, 12th and 13th, fall still more under this exception or regulate other inferior objects of compact. But the 2d and 5th are of a different impression. By the former, each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right, not expressly delegated to the United States and by the latter, that of appointing, continuing, or removing its own delegates at pleasure. These are the powers, and this the form, of the present government.

5.21.7 An attentive view of the subject will satisfy us that these powers are really great and extensive; they appear to have contemplated the greater part of those concerns wherein it might be supposed they had a national interest. Having made the United States the sovereign arbiters of war and peace, given them the right to require men and money, equip fleets and armies, to send and receive ambassadors, make treaties of alliance and commerce, with the very extensive catalogue which I have already enumerated, except the regulation of trade there seemed to be little left of external policy to the individual states. It is not my object to inquire here whether these powers should be more extensive. I may in the course of these observations; at present I shall examine more particularly the effect or operation of a government organised like this.

5.21.8 It is to be observed that by the 2d article the individual states retain their respective sovereignties, jurisdictions and rights in all cases not expressly ceded to the confederacy. And by the 5th they reserve the right of appointing, continuing or removing their respective delegations at pleasure. To these articles we are to look for the tone and character of this government, for upon these does its good or bad qualities depend. It is upon this point, that the present commotion hath taken place in America, and upon the merits of which we have to decide.

5.21.9 The deputies from each state being amenable for their conduct, and depending on it for their hopes and prospects, necessarily negociate for its interests. This property or distinction pervades the whole body, and thus

their general council or the Congress becomes a diplomatick corps, or a corps formed of ministers or representatives from sovereign states acting for the particular advantage of that to which they belong. The efforts therefore of each state, whatever may be the powers of the union over the several members that compose it, will be to shield itself from the common burdens of the government; and to effect this all the arts of intrigue and negociation will be constantly exerted. What is the obvious course of a government organised on such principles? Are not the seeds of dissolution deeply ingrafted in it?[1] The most powerful principles of human action[,] the hope of reward and the fear of punishment[,] are in the hands of each state, and whilst mankind are subject to their influences, or the passions and affections of the human heart continue as they have been, its course will always be the same. This government it is manifest can never bè an efficient one. Strong necessity and emminent danger may make it so occasionally, but whenever this cause ceases to operate, its repellent principles will prevail. If this position is just, I am perhaps right in supposing it a consequence necessarily resulting from it, that the stronger the powers of the government are, the more repellent will its qualities be, and the sooner its dissolution; at least certain it is that the conflict between the general and state governments, will be proportionally more violent, and its or their ruin the sooner accomplished, for it must soon terminate either in that of the one or the other, I mean as an efficient government. The higher toned those of the states were the more rapid would the progress be. I think I may venture to affirm that a confederacy formed of principalities would not last long, for the pride of princes would not brook those familiarities and insults which a free discussion of rights and interests, especially if they interfere, sometimes unavoidably occasions; and when an absolute prince takes offence he wields the state with him. But this is not the case with democracies, for although their chief magistrates may be offended, yet it is difficult for them to communicate at the same time, the same passions and dispositions to the whole community which they themselves possess.[2] This is a caution however which I hope it is not necessary to suggest here, for I am satisfied the state governments will never take this turn of themselves, nor whilst that of the confederacy is preserved and properly supported. But to carry this government a little further into practice.

5.21.10 Let us submit the concerns and interests of different states or individuals within them to this corps formed of representatives from each negociating for that to which they respectively belong, and what kind of justice may we expect from its decisions? If magazines were to be established or troops raised and stationed in some quarter of the union for public defence, might we not expect that these arrangements would take stronger byas, from the combination of the day, than any sentiment of propriety? If states or individuals within them had claims founded on the same principles with those upon which a decision had already been had in favour of others, are we to

calculate with certainty upon a similar decree? In short apply it to every case that may possibly arise, either of states or individuals, in the full scope of its powers, and we shall find its decisions depend, more upon negociation, the bargain of the day, than any established maxim of justice or policy.

5.21.11 On the other hand how are its treaties, laws, or ordinances to be carried into effect? Are they of authority and in force immediately within the states as soon as they are passed? Or does it require the intervention of a state law to give them validity? And if the law is necessary may not the state refuse to pass it, and if she does how shall she be compelled? It is well known from the practice of all the states in the confederacy that no act of Congress, of what nature soever it may be, is of force within them, until it is recognized by their own legislatures, prior to that event it is a nullity, and to that only does it owe its authority. This view of the subject demonstrates clearly that the present government, in its ordinary administration, though a league of independent states for common good, and possessed of extensive powers, must always be void of energy, slow in its operation, sometimes oppressive, and often altogether suspended—that it can never be calculated on by foreign powers, and of course that they will form no treaties or compacts whatever with it, that stipulate any thing, at least on equal terms, that in fine very little dependence can be placed in it by the states themselves, for destitute of the power of coercion, to say nothing as to the justice or propriety of the measures themselves, these will not be forward to comply with its demands, whilst those may refuse with impunity. On the other hand the illustrious event which hath placed them in the rank of independent states demonstrates with equal certainty, that it is competent to external defence, and perfect security from abroad, for how otherwise could it have been atchieved? These are the defects or the principal defects in the form of the present government, and they are inseparable from the league of independent states, for to that circumstance, and that alone they are to be attributed. We have then to weigh these evils, and compare them with the probable benefits and dangers that may accompany a change, and then see in which scale the balance preponderates.

5.21.12 It may be now asked are we reduced to this alternative either to subvert the state sovereignties or submit to these evils? Is the state sovereignty a vain and illusory hope, is it incompatible with its own and the general interests of the confederacy? Or is there any other alternative? The practice of nations and the field of enquiry is open before us, and we have every thing that is sacred and dear to mankind depending on the event. Two species of remedy only present themselves to my mind, and these contemplate either a complete annihilation of the state governments, or a partial one or considerable reduction of their powers. A complete annihilation and the organization of a general government over the whole, would unquestionably remove all the objections which have been stated above, and apply to it as a fœderal government; and I will be free to own that if it were in reality a practicable

thing, there is no object which my mind has ever contemplated, the attainment of which would give it such high gratification.[3] To collect the citizens of America, who have fought and bled together, by whose joint and common efforts they have been raised to the comparitively happy and exalted theatre on which they now stand; to lay aside all those jarring interests and discordant principles, which state legislatures if they do not create, certainly foment and increase, arrange them under one government and make them one people, is an idea not only elevated and sublime, but equally benevolent and humane. Whether it contains within it a territory as extensive as the Russian or German empires, or is confined in its operation to the narrow scale of their smallest principallities or provinces, yet it is the business of state legislation to pursue its destined course "the interests of those who live under it." For a legislature to contemplate other objects, and make a sacrifice of their own for the good of other people, or even decline availing itself of the legitimate exercise of its powers for that purpose, upon every opportunity which chance or fortune may present in its way, is a degree of liberality to which the human heart hath not as yet attained.[4] A society of philosophers of the antient stoick sect might perhaps be capable of such extended philanthropy, but this sect is now altogether at an end, and at its height, never formed but an inconsiderable part of any community, and was by all the rest of the world considered as affecting objects without the pale of human nature. How much more delightful therefore is it to the mind to contemplate one legislature organized over the whole continent, containing all the free inhabitants of the American states within it, nourishing, protecting, and promoting their interests in every line and extending its genial influence to every part; commerce flourishing, arts encreasing, lands rising in value, with all those other happy concomitants that attend a well formed and wisely directed government, than thirteen different legislatures, in pursuit of local objects, acting upon partial and confined considerations, without system or policy, jealous of their particular rights, dissatisfied with, and preying upon each other. If it were practicable, I should embrace this change with the utmost pleasure, and consider it the goal at which all our efforts should bend, the polar star that should direct all our movements. I should consider the abolition of the state legislatures as a most fortunate event for America, and congratulate my country on the commencement of a new aera in her affairs from whence to date the dawn of better hopes and happier days. But is it practicable, can it be accomplished? Can a legislature be organized upon such principles as to comprehend the territory lying between the Mississippi, the St. Lawrence, the Lakes, and the Atlantic ocean, with such a variety of soil and climate, contain within it all the vital parts of a democracy, and those provisions which the wisdom of ages has pointed out as the best security for liberty, and be at the same time a strong, efficient, and energetic government? Would it be possible to form in every respect a complete consolidation of interest and how otherwise would its

operation affect the weaker party? Or to accommodate its legislative acts so as to suit those of a local kind that were variant in the nature of things? To form a system of revenue, by direct taxation and excise, regulate the mode of collection, supervise it, without the establishment of a train of officers, and tribunal under tribunal, that would not be enormously expensive, free from more than ordinary imposition, and preserve the spirit of the government? Seperated at the distance of near 1200 miles, suppose the dispositions to do right the best that nature can infuse into the human heart, generally speaking in the operation of the government, will the man of Georgia possess sufficient information to legislate for the local concerns of New-Hampshire? Or of New-Hampshire for those of Georgia? Or to contract it to a smaller space of New-York for those of Virginia? Will not of course most of its measures be taken upon an imperfect view of the subject?[5] A wise legislator should possess a precise knowledge of the situation and interests of all the territory and of the state of society, manners, and dispositions of the people within it committed to his care. Some men perhaps to whom a kinder fortune had dispensed her more liberal gifts, who had devoted their earlier life to travels, general science, and those researches that were particularly necessary for it, might succeed, but unfortunately for us the most sanguine admirer of this plan, could not promise to America that her national councils, should always be filled with men of this stamp. I would not wish to discolour this plan of a complete national government, acting in all cases for the common good, to the exclusion of subordinate legislatures, so delightful in theory, with the reverse of this picture, nor to depaint those consequences which might result from its maladministration, if instead of the best qualities that are the portion of humanity, it should be its fortune to have its councils filled, with men remarkable for their ignorance, or any great malignity of heart, contending against difficulties, under its best form and with its best hopes, which perhaps are insurmountable, what would be its situation and issue in that event? As this subject is of great importance and leads to a decision upon an important trait in the plan of government now before you, it will be proper to give it a more particular investigation.

Perhaps an attention for a moment in this respect to those political establishments which have been erected in different quarters of the globe, in antient and modern times, may furnish an instructive lesson, upon the present occasion. In but few instances, and those at distant intervals of time, hath a democracy or government of the people ever been established. To what cause it is to be attributed, philosophers and statesmen may differ, but it is an unquestionable truth, that there hath been a constant effort in all societies, to exterpate it from off the face of the earth. The contest hath been often violent, and the manly exertions which the friends of equal liberty, have made against this disease of human nature, is the great, the instructive subject of history. They have had to contend against difficulties thrown in their way by all ranks of society: If the poor and those in moderate circum- 5.21.13

stances only, where an union might have been expected had united, a tyranny had never been erected. But the ignorance, the folly, and often times the vices of the lower classes have perhaps favoured this tendency as strongly as the lust for dominion and power in the wealthy. To illustrate this position by a review of the commencement, progress, and decline of those nations with which history furnishes us examples, with the causes that have contributed to hurry them to this their last stage, would not only present to your view a melancholy monument of the weakness of human institutions, but lead me beyond the bounds of the present enquiry. Be assured however there is no fact better established by history, than this tendency or effort in all societies, to defeat the purpose of their own institution, and terminate in despotism. If then we are not the unfaithful guardians of those rights, which an all gracious providence hath bestowed upon us, should we not attend to every circumstance that may contribute to preserve them? And will it be questioned, that the extent of territory is one of those that will have no influence on the subject?[6] The governments that have been purely democratic, to which only we should resort for satisfactory information upon this head, if any ever were, are but few. In several it is true the people have had some share of power, as in that of Rome. But it cannot be questioned that in this the Nobles or aristocracy had the prevailing influence. The endless quarrels between the different branches or rather orders of the people, the Senate and plebians, is perhaps the real cause of the perpetual warfare and extensive conquests, made by this rapacious mistress of the world. When the people became incensed against the Senate, as they often had reason to be, the latter had always sufficient address, to give their passions other objects to act on, by turning them against foreign powers. With this view it seems to have been a political maxim with that branch, in whose hands the executive authority was also lodged, never to be at peace with all nations at the same time, and in this they succeeded tolerably well, for from the commencement to the final dissolution of the empire, the temple of Janus, always open in time of war, if we may credit the tradition of their best historians, was hardly ever closed. But so soon as the whole globe had acknowledged her authority, and bowed beneath the yoke, the immense fabric she had thus raised fell to pieces. External opposition that had raised it to the height it had attained, having ceased, its foundation was taken away. There was no principle within it to unite its parts together. From this it is to be presumed that if her government had been organized upon harmonious principles, and made the people happy under it, her dominion would never have extended over more than one-tenth the territory it did. But be this as it may, the government of Rome acknowledged distinct orders of people, in which indeed the aristocracy prevailed, and can of course furnish no example for us. This may be said of Lacedemon and of Carthage, for according to the opinion of a profound historian and observer on the subject of government, that of Carthage was also divided and the greater

portion of power taken from the people and placed in the hands of the aristocracy.* If any ever were, Athens, Thebes, and Corinth, were for a time, pure democracies. But shall we draw our conclusion from their example, whose jurisdiction was more confined than that of some of our smallest states? In short, let us contemplate what forms, in what countries and times we please, where the rights of the people, and the spirit of liberty, were in any degree preserved, and we have the most solemn admonition to beware even making the attempt. The monarchy of Britain in which the executive power is armed with almost despotic authority, comprehends within it a territory smaller than that of this commonwealth, and yet it is believed its administration is happier than if it were more extensive. Even the king of France, sensible that his government will be happier for his subjects, and more faithful and beneficial for himself, has shewn a disposition to re-establish the provincial assemblies for this purpose, yet it cannot be denied that his powers are otherwise sufficiently great, or that any monarch was ever, in a greater degree, or more deservedly beloved by his people. But if these examples are not sufficient to warn us of the fatal consequences that will attend the vesting such powers in the Congress, let us turn our attention to those nearer at home, and which perhaps will make a deeper impression on our minds, and do we not behold the province of Maine separating from Massachusetts, Vermont from New York, Wyoming from Pennsylvania, and the district of Kentucky from Virginia, on this very principle, with others no less striking that might be enumerated.

It is true the improvement of government under this form, by representation, the discovery of which is attributed to modern times, might make some difference in this respect, but are there no bounds within which it should still be restrained? Shall it attempt things that seem from the concurrent testimony of all history to be the appropriate object of despotism? Maladies that are incurable after they have afflicted the body with all the pain and anguish incident, to a frail and feverish being, exhausted its efforts, and worn out its constitution, complete the work by terminating its existence. This government too, after having experienced the vicisitudes of fortune that might accompany its natural imperfections, of laws badly formed and indifferently executed, of anarchy disorder and confusion, after having worn out and broken the spirits of the people, would also have its end. But what form it would then assume is left for time to develope. The diseases of every government suggest its remedy. Other circumstances it is true give it a byas, but these have a principal influence in directing its course. Those of the federal system and which owed their birth and enormity to the want of strength in the federal head, had disposed the people to agree to an annihilation of their state governments, which yielded to the present one. Had this change been accomplished, by the designs of wicked and abandoned men, by 5.21.14

*Polybius, vol. 3, [bk. VI] page 92.

the usurpations of a tyrant, or the seductions of art and intrigue, it is to be presumed, and the experience of other countries hath approved it, that the people would now return to that they had forsaken, with a degree of zeal and fervor proportioned to the sufferings they had borne.* But if a long and patient experience had shewn its defects, a calm and dispassionate appeal had been made to their understandings, and a recollection of the great calamities, it had inflicted on them, demonstrated it was neither calculated, for the care of their liberties, their safety or common interests, they would make a new experiment and take a different course. From the causes above stated the incapacity of the legislative branch to form happy, wise, or uniform laws for the government of a territory so extensive, and of a people in pursuit of objects so opposite in their nature, had perhaps already often clogged its operations and suspended its course. This had gradually alienated the affections of the people and created in them a contempt for this branch of the government. The powers of the executive had of course been proportionably increased, for it is natural for the latter to supply the defects of the former. Accustomed to behold it in miniature, and to derive relief from its friendly interference, the people are at length prepared to have recourse to a Royal government, as the last resort the only safe assylum for the miserable and oppressed.[7] And this perhaps would be the issue of the present government; and for these reasons I should dread its establishment over these states. For to however low and pitiable a condition we may have fallen; however deservedly we may have acquired the contempt and scorn of nations, yet I had rather submit in peace and quiet, to those reproaches which the proud and disdainful may throw upon us, than by commencing on a stage upon which the fortunes of all nations have been wrecked, however splendid and meteor like our transient exhibition might be, risk the enjoyment of those blessings we now possess.

5.21.15 But may not some middle course be struck, some plan be adopted to give the general government those rights of internal legislation necessary for its safety, and well being, in all cases, and yet leave to the states other powers they might exercise to advantage? If by this it is intended to comprehend the right of direct taxation and excise with the absolute controul of the resources of the union, it will be easy to perceive its consequences. Those who are in any degree acquainted with the principles of government, or with those of the human heart well know that upon this point, the equal distribution of the resources of the union, between the two governments, will their balance depend. If you place the whole into the hands of one, it will require no casuistry, no great degree of depth in this science to determine which will preponderate. Acting on the bowels the body will soon decay and die away. The pageant ornaments and trappings of power will not last long, for the reason and good sense of mankind turn with disgust upon the mockery of

*As in the restoration of *Charles II.* in England.

empty forms. Such an arrangement would therefore in my apprehension, embark us on a more perilous and stormy sea, than even a complete annihilation of the state governments.

If then such a government as I have above described in either view presents an impracticable alternative, or such an one as we should not without a nearer and better view of it embrace, the other mode only remains or that which proposes the organization of a general government over the states forming a part of and acknowledged by the constitution of each, leaving at the same time a qualified government in each state for local objects. Let us examine this then since it is the only safe or even plausible course for us to take. 5.21.16

To organize a general government, that shall contain within it a particular one for each state, or in other words, to form a constitution for each state, which shall acknowledge that of the union, is no easy thing, for there never was an example of the kind before. The amphictionic council, Achæan, Belgic, or Helvetic confederacies were but leagues of independent states, somewhat similar to the present one. To mark the precise point at which the powers of the general government shall cease, and that from whence those of the states shall commence, to poise them in such manner as to prevent either destroying the other, will require the utmost force of human wisdom and ingenuity. No possible ground of variance or even interference should be left, for there would the conflict commence, that might perhaps prove fatal to both. As the very being or existence of the republican form in America, and of course the happiness and interests of the people depend on this point, the utmost clearness and perspicuity should be used to trace the boundary between them. The obvious line of separation is that of general and local interests.[8] All those subjects that may fall within the former distinction, should be given to the confederacy, and those of the latter retained to the states. If the federal government has a right to exercise direct legislation within the states, their respective sovereignties are at an end, and a complete consolidation or incorporation of the whole into one, established in their stead. For in government it is, as in phisicks, a maxim, that two powers cannot occupy the same space at the same time. Let this therefore be the characteristic line of the division; internal legislation or the management of those concerns which are entirely local shall belong to the states, and that of those which have a foreign aspect, and in which they have a national concern, to the confederacy. In forming a constitution on these principles, the same rule should be observed, that has been in forming those of individual states; defining the powers given and qualifying the mode, in which they shall be exercised. All powers not ceded it is true belong to the people; but those given in a constitution are expressed in general terms, as that the Congress shall levy and collect duties; this involves in it the right of making laws for the purpose, for the means are included in the power; otherwise it is a nullity. The species of evidence and the mode of tryal are 5.21.17

subordinate objects under it, and does it not follow that the Congress might regulate these at pleasure? How are we secured in the trial by jury? This most excellent mode of tryal which has been found, in those few countries where it has been adopted, the bulwark of their rights, and which is the terror of despotic governments, for it disarms them of half their power, is but a matter of police, of human invention; if then we gave general powers unless we qualified their exercise by securing this, might they not regulate it otherwise? I would not be understood to insinuate it would be the case, but that it were possible is improper. The spirit of the times might secure the people of America perhaps for a great length of time against it; but fundamental principles form a check, even when the spirit of the times hath changed, indeed they retard and controul it. As it is with the trial by jury so with the liberty of conscience; that of the press and many others. As to the powers themselves, the distinction being drawn, the enumeration would be of course. To those of the former Congress some few might be added, or from those of the constitution, some few taken away, for nominally there is not so great a difference between them as some people suppose.[9] To the former for instance, let the absolute controul of commerce with the revenues arising from it be added. Let the right of apportionment be as in the constitution, for the ground on which the states have met on that point is certainly a happy compromise being that indeed which had been long recommended by Congress. Let them regulate the disciplining and training of the militia—the calling them forth and commanding them in service; for the militia of a country, is its only safe and proper defence. All countries are more or less exposed to danger, either from insurrection or invasion and the greater the authority of Congress over this respectable body of men, in whose hands every thing would be safe, the less necessity there would be, to have recourse to that bane of all societies, the destroyer of the rights of men, a standing army. But it may be urged the revenues from the impost would not be sufficient for national purposes, and that without the right of direct taxation, the government would be forced to have recourse, to the expedient of requisitions, the inefficacy of which had already been sufficiently experienced. The position in the first instance, as to the insufficiency of the revenues is doubtful; but the apprehension of the states neglecting requisitions under this, as they have done under the late government still more so. When the United States became in effect a national government, by being incorporated with those of the states, possessed considerable revenues, had at their command a fleet and army, with the absolute controul of trade; I cannot but believe that their constitutional demands, or requisitions, would be complied with. Let the individual states also be restrained from exercising improper powers, making war, emitting paper bills of credit and the like. All restraints that were necessary for the wise administration of a good and virtuous government, would have my ready assent. It is not my

intention to draft a form, a general idea is all I aim at, and in this perhaps I am tedious.

Having defined the powers, marked the line between, and secured as far as possible the harmony of the two governments, by making the former a part of the latter, it will be necessary to organize it upon such principles, as to secure the wisdom and happiness of its administration; for I presume it does not necessarily follow, because the constitutional acts of the government will be executed and become the laws of the land in each state that our researches should be at an end, and that we should conclude we had remedied all the defects of the present one. On the contrary our anxiety should be increased tenfold. From that our safety was to be attributed to its imbicility; but from this we should not be able to shelter ourselves under that protection. We should therefore be the more zealous, proportioned to the prize we have at stake, to distribute the powers and poize the government, so as to secure equal justice in all its acts, to every part of the confederacy; for wretched and forlon will the condition of that be, which shall not find itself equally secure under the protection, and in the enjoyment of its blessings, with every other part. From royalty itself, where the power is concentered in but one person, fluctuating in its systems and unsettled in its course, sometimes a ray of benevolence and even of justice is reflected on those whom it had marked out as the object of its resentment. Nature has cast into but few characters such malign and unfriendly dispositions, that their revenge cannot be satiated. But from a combination of states, acting systematically in pursuit of particular and local interests, wielding in their hands the powers of the government, and of course secure not only from censure but of the approbation and applause of those whom they served, however severely the attainment of the objects it contemplated, might bear upon the interests of the unfortunate minority, yet from their justice, it is to be feared, that neither moderation nor even mercy could be expected. But the present system is that we have to remedy and we should never loose sight of its defects. If the new government should be organized in the same manner with the old, consist of one branch only, each state appoint her own delegates and recall them at pleasure, I am satisfyed it would in the administration in Congress, or passage of the acts, be found in the experiment in that respect, just such a government as the other. There would be the same negociation, intrigue and management for the advantage of each state that now prevails. Its movements would be as slow and its decisions as unjust as they sometimes have been. In short it would still be a government of states in every respect and not a national one. How then shall we guard against, check and controul this intolerant and destructive state spirit? How infuse into all its departments a love, respect, and dread of the whole, for upon this every thing depends? 5.21.18

It has been long established by the most celebrated writers, but particu- 5.21.19

larly illustrated and explained by the Prendent Montesquieu and Mr. Locke, that the division of the powers of a government over one state, or one people only, into three branches, the legislative; executive, and judiciary, is absolutely necessary for the preservation of liberty.[10] This is now admitted by all who are not the friends of despotism, and I am persuaded it has already been demonstrated in the course of these observations, that such a division is, if possible, more necessary in a government to be organized over more than one. Taking this position then as established, I will proceed to an examination of the principles upon which this organization should be formed.

5.21.20 If the states as such or in their legislative character appoint any of the officers of this government, the effect will be the same, provided the rotative principle is preserved, which will I hope never be given up, that has already been experienced; for in the appointment is involved that of responsibility. It should therefore proceed from the people immediately, or by means of electors chosen for the purpose. This will make them amenable to the people only for their conduct, or to such constitutional tribunals where they are practicable, as they shall establish to take cognizance of offences. This we apprehend would contribute much to the establishment of a national government; each would move in the sphere the constitution had appointed for it, and be accountable to the people only for their conduct, the high and pure source, from whence they respectively derived their authorities.

5.21.21 The legislative branches are in all democratic governments, and of course would be so in this, the immediate representatives of the people. They should therefore be kept as dependent on them as possible, having in all respects the same interests with themselves. For offences in these branches the general government can provide no punishment, for there can be no tribunal under it, to take cognizance of them. Charges of corruption or prosecutions for it, or other offences, committed by those in these branches, should not be allowed from those in the others, for this might either unite them in mal-practices against their country, or create endless strife between them, and thereby destroy the balance of the government. A free people are the only proper judges of the merits of those who serve them, and they only should bring them to justice. This shews the necessity of frequent elections. The members of each should in my opinion return to the body of the people, those of the house of representatives at the expiration of every two years, and those of the senate of every four years, capable however always of re-election. Both these branches should if possible be filled on the principles of representation from all the states. For the house of representatives, the rule adopted in the constitution, is perhaps the proper one. Let twice that number, or a still greater ratio of numbers to that of representation, be the rule for the senate. The members of both branches should be incapable of appointment to other offices whilst in these, otherwise, a wide door will be

left open for corruption. This is not an idle or visionary precaution, but in a great measure the pivot, upon which the upright and faithful administration of the government will depend. The experience of Britain hath demonstrated, how often the most valuable interests of the people, have been bartered away, by leading members of the house of commons for a seat in the house of peers, or some lucrative office in the government; how much greater then should our apprehension be, of danger in the present instance, when we recollect that the government is organized upon such principles as to acknowledge no responsibility to the states, and comprehends within it such an extent of territory, as to put it out of the power of those who inhabit its extremities, to have any knowledge of the conduct of their servants! The possibility of this kind of traffic should therefore be absolutely prohibited.

But the power of the legislature should be confined to those objects, 5.21.22
which were intirely legislative in their nature, as the regulation of trade, requisitions for money, and the like. The soundest authorities and the melancholy experience of our state governments have shewn the propriety of this restraint, in a constitution over one state, and for reasons that are obvious the expedience, will be the more urgent, in the present instance. Its natural effort in all cases is, to grasp to itself all the powers delegated from the people,* and to prostrate the other branches before it; stimulated on by the state spirit, which will in some degree still remain, the difficulty here will be proportionably increased. The ingenuity of man can devise no other, without an appeal to the people, which if possible should always be avoided, than that of giving the Executive, the other active branch an absolute negative on the laws; for otherwise its enterprizes must be successful. Many restraints might be designated by the constitution, but without effect. And from this at the same time that it preserved the balance of the government, no injury could be sustained. Against the encroachments of the Executive the fears and apprehensions of the whole continent would be awake, with a watchful jealousy they would observe its movements. But against the legislature (if we may reason by analogy of that branch in this) from those in other governments, no such apprehensions could be entertained. Its movements comparitively would be accompanied with the confidence of the people. Every incroachment upon its rights would be popular. In every contest between them it must of course yield the ground. In short unless the Executive had a negative on the laws of the legislature, it would soon exist only in name.[12]

The right of impeachment and the mode of trial are of the first importance 5.21.23
in this government. The former, if with the people or even the states themselves, would never be exerted or greatly abused; it should therefore belong to the house of representatives. And the latter should be vested in a court of

*De Lolme.[11]

that high confidence and respectability of character, as to partake of none of those passions that sway the bulk of mankind. Unconnected by office, and of course no way interested in the event; unacquainted with the crime except as it might appear before them by satisfactory testimony, they should hear calmly and judge dispassionately upon the merits of the cause. From their decision the guilty would receive a fair condemnation, or the innocent be restored again to the confidence of their country, and the people return satisfied that their passions had been awakened, and their fears alarmed without any just foundation. The sentence should be final, and not shifted off to another tribunal. A further prosecution may appear odious, and the just resentments of the people calm away, and totally subside. For these reasons the senate should form the court of impeachment.

5.21.24 But although the legislative branch shall be elected by the people, and amenable to them alone for their conduct, yet as the state sovereignties though qualified, will still remain, and of course the state spirit, in contradiction to a fœderal one, from necessity be more or less influential in its councils, we should turn our attention to the other branches of the government, as our firm resource. The Executive is that upon which, in many respects, we should rest our hopes, for an equal, a fœderal, and a wise administration. Every possible effort should therefore be used to expell from the hearts of those who fill it, a preference of one part of the community to another. The experience of other governments hath taught us, it is possible to devise checks, which from motives of policy and private interest, will even make bad men faithful public servants.[13] The prospect of reward and the fear of punishment, as has already been observed, are the most powerful incentives to virtuous action. It should therefore be so organized, as to give every quarter indeed every man of the union, under the influence of these principles, as to those who fill it, an equal access to the human heart, whenever this equipoise is destroyed, and this high character taught to look up to this, or that state, or combination of states for the smiles or the frowns of government, from that moment will its oppression be felt, and a dreadful anarchy insue. And if you take from those whom the choice of their country hath called forth to this high station, the hope of further favour, and mark to them the extent of service, after the completion of which the door shall be forever closed upon them, in that degree will you deprive yourself of one of the principal instruments by which you are to preserve the equilibrium, and secure the public safety. Discharged forever from the service of the United States, will not the approbation of the union, cease to be the ruling passion, and an accommodation to state interests take its place and influence many of the public measures? For these reasons I could wish to see the right of impeachment, extended upon as liberal ground as possible, given for instance to the representatives of one third of the confederacy; and I could likewise wish to see the citizen at the head of this department, capable of re-election at the expiration of his service which

should be at the end of every three or four years, so long as he should merit the confidence of his country.

The mode of election should also be a fundamental in the organization of this branch.[14] If the command of this office was placed within the reach of court influence, the most alarming consequences were to be apprehended from it. If the ultimate decision should happen at the metropolis, it is easy to be perceived what an opportunity this would present for venality and corruption. It must be a great object particularly for either France or Britain to have the friend of their respective courts in this office, possessed of such extensive powers and which might dispense such important favours to them. The influence of the presiding magistrate himself, especially within the town in which he had for some time resided, and to whose citizens he had rendered many substantial services, and who of course would be averse to the introduction of a *novus homo* among them, would not be inconsiderable. In addition to which it is to be observed, that it forms a departure from a principle which should prevail through the whole, but particularly in the organization of this branch, a dependance of this officer, for every thing estimable among mankind, upon the people of America. By the people therefore should the appointment be made, not in person, but by the means of electors chosen for the purpose. To prevent the possibility of any interference, or byas on their free election, that of the electors by the people, should be on the same day in every state, and that of the President by the electors likewise on the same day and at some specified place in each, unless an invasion, or other extraordinary circumstance should prevent it; in which case perhaps the electors themselves, or the executive of the state might appoint some other. Whatever time might be employed in this mode of election is immaterial; it is of the first importance, and should never be dispensed with, that he be thus appointed. 5.21.25

But high power[s] in the Executive branch require in every respect, a direct and immediate responsibility; for although it should be so organized as that whilst to those who fill it, and act with propriety in the discharge of its functions, the door should be left open for a continuance of public favour, yet the sword of justice should be held constantly suspended over the heads of those, who shall be convicted of having basely sacrificed the interests, or made attempts upon the liberties of their country. There should be no constitutional restraint, no equivocation of office, to shield a traitor from the justice of an injured people. No circumstance to blunt or turn aside the keen edge of their resentment. With the charge should the powers of his office cease. He should stand alone unsupported, and unprotected except by the integrity of his heart and the rectitude of his conduct. For these reasons the executive power should be vested altogether in one person; unrestrained by a constitutional council, its operations will be more easy and regular, and its responsibility the greater and more immediate.[15] And for these reasons if there is a constitutional council it must be from its nature the most improper 5.21.26

tribunal, that can be formed or conceived, for the tryal of the offences of the principal, since they must be either partakers of the crime, or some way or either a party interested in it.

5.21.27 With an Executive organized on these principles, being independent of the legislature, and in a very responsible situation, I should be well content to intrust great powers, because I should calculate with tolerable certainty upon an honest and a wise execution of them. The constitution perhaps suggests those, with some exceptions that are proper; whether it would be safe to give it the absolute controul of the fleet and army at all times, in peace and war, the ordering them out, and laying them by, without consent of the legislature, or even knowledge, is at least doubtful. In Great Britain this power may be committed to the King with propriety; but he is the Lord of hereditary dominions, and transmits the inheritance in his line forever. By betraying his trust he might lose his crown, and perhaps gain nothing, even if he established despotism. But with the President who perhaps depends on a quadriennial election the case is different. It is certainly a formidable power to place in the hands of any one public servant. I would however in no event interpose the opinion of the legislature, so as to controul the movements of these forces, but merely to affix the condition, or emergency, upon which his absolute power over them should commence. As I would repose the whole trust of this department in one officer, so he alone should be responsible for all its transactions. He might associate whom he pleased, of the wise men of America in his councils, but they should be of his own association. An allowance might be made him, to compensate them for their services, for which he should be accountable.

5.21.28 Controversies between independent nations are usually settled by the sword. It is to the misfortune of mankind that no tribunal has ever been established to adjust their interfering claims, and inforce its decrees. It has been the defect of all other confederacies, of whose institutions history has given us any account, that although attempts in some have been made in this respect to preserve the harmony, and lessen the calamities of mankind, yet the courts to whom their controversies have been submitted, the council or representative body of each, have not been organized on such principles as to insure justice in all their decisions. To this circumstance perhaps many of their calamities were to be attributed. The framers of the confederation in some degree also fell into this error for those only of a territorial kind were to be submitted to a fœderal court.[16] Under that form its inconvenience has been often very sensibly felt, but under the present it would be insupportable. Great care should therefore be used, in the organization of this branch, to remedy this defect. The judiciary in this, as in all free governments, should be distinct from, and independent of the other branches, and equally permanent in its establishment. Performing its appropriate functions, the extent of its authority should be commensurate with theirs. As it forms the branch of a national government, so it should contemplate national objects

only. Whatever cases might arise under the constitution, the laws of the legislature, and the acts of the Executive in conformity thereto, (however trifling or important the interests it affected might be) should have their final decision from this court. All cases affecting ambassadors, other public ministers and consuls—of admiralty and maritime jurisdiction—all controversies between different states—between the United States and a state—a state and the citizens of another state, citizens of the same state claiming lands under different states, should of course be submitted to its decision. In cases affecting ambassadors, other public ministers and consuls, and in which a state shall be a party, the Supreme Court should have original jurisdiction; in the other cases above mentioned appellate jurisdiction as to law only, and from the Supreme Courts of the respective states. The laws of the United States becoming under the constitution those of each state, their courts of course take cognizance of them, from whose decisions, the object of the union will be completely answered by an appeal to their court as to law only, and with great accommodation to the interests of the people. In the organization of this branch, the object should be to found it on the state establishments, and not independently of them, for in the latter case new and very extraordinary difficulties present themselves to view, among which the clashing of jurisdictions would perhaps be the least important. The judges should be appointed by the President, who would of course take them from among the meritorious of our citizens in the different quarters of the union.

Having shewn the defects of our present federal system, pointed out those remedies or amendments both as to its powers, and their distribution or organization, that have appeared to me advisable, I am naturally led in conformity to the plan I had laid down in the beginning of these observations, into a more minute comparison or examination, of the constitution now before you, by the standard or test of those principles I have endeavoured to establish. And this I will confess, is the most painful part of the present enquiry. But where there is a contrariety of sentiment, in any degree, there can be no other mode of investigation; and it is I am persuaded the fairer course, for if the principles themselves cannot be supported it necessarily results, that all reasoning or deductions from them fall to the ground. 5.21.29

It may be recollected that I have not objected to any of those powers which were necessary to add, to the energy, strength, resource, or respectability of the government, but have fought to divest it of those only which I conceived it could never exercise, were impracticable, and whilst they remained even if not brought forth into action, would lessen it in the confidence of the people, but if ever exerted prove the source of endless strife between the states and the general government, that must terminate in the ruin of either the one or the other, which I have considered, (perhaps improperly) as a great national calamity. Those to which I have particularly 5.21.30

alluded are the right of direct taxation and of excise through all the states; and the more I have reflected on this subject the better satisfied I have been, that if the other powers were vested in it, and the government made as thereby it would be, strong, energetic and efficient, that the leaving those with the states would not only be happier for them, but more beneficial for it. For whether we examine it as an abstract proposition, or avail ourselves of those lights which the history of all times hath presented to our view, yet the demonstration, at least to my mind, seems satisfactory and conclusive, that under such a government, able and willing to compel the states to perform their duty, the want of which is the great defect of the present system, and which would thereby be completely remedied, that the same objects might be attained to better advantage through their intravention, than by any other mode or institution that could be adopted for the purpose. As this is perhaps the only objection which I have to the powers contained in the constitution, and is founded on principles I have already fully explained; it will be unnecessary to attempt a further illustration of it here. I shall therefore proceed, admitting the propriety of the general division into three branches, to an examination of the subordinate organization of the government, and first of the legislature.

5.21.31 Its division into two branches[,] an house of representatives and senate[,] has appeared to me to to be perfectly right; and the mode prescribed for the election of the members of the former by the people not only practicable, but highly commendable. The right of originating money bills, and of impeachment, have also been properly assigned to this branch; the term of service and the principle of representation upon which its house will be formed appear likewise inexceptionable. In short this branch of the legislative is organized entirely to my wishes. I must however confess my mind has not as yet acknowledged in these aspects, the same prepossessions in favour of the senate. The great defect as has been already often observed in the present form, is that of its being a diplomatic corps, a government by and for states, and not in any view of it a national one. In changing it, the object should be to correct that defect in all cases whatever, so far as it might be practicable, which can only be done by taking the appointment of all its officers out of the hands of the states, in their legislative characters, and placing it in those of the people, or electors by them appointed for the purpose. This has been done with the members of the house of representatives, but departed from with those of the Senate. This branch will therefore be in every respect the representative of the states, dependent on and responsible to them for their conduct. In forming a right estimate of the consequences resulting from this property in the character of this body, and of the tone it may give to the measures of the government, we must examine its powers in every direction, and pursue its operation upon every subject. And first as to its share in the legislature or its influence upon all legislative acts.

The senate has an absolute negative upon all laws; from this it results that 5.21.32
those not for the advantage of the states, or the prevailing faction in the government, to which they respectively belong will by those thus circumstanced be rejected; for is it to be presumed that because ten members from Virginia, eight from Massachusetts or Pennsylvania in the house of representatives, have passed a bill, whilst one from Rhode Island or Delaware only had rejected it, that these states will give up their equal suffrage in the senate? Is it not more presumable that their senators will look on at the nominal and unimportant superiority of those states, in the other house, laugh at their supposed triumph, and await coolly its submission to their board, where its fate will be inevitable? Or is it to be supposed, that the right to originate money bills, a thing proper in itself, being the more democratic branch, in the house of representatives, will controul this disposition, especially when we recollect that they are both only representative branches, equally dependent on the passage of such a bill for their wages or salary, and that the members of the latter holding their offices for a shorter term, have perhaps not been able to introduce such a degree of œconomy and order into their finances. This is a check of great importance in the English constitution, and indeed the preservation of the democracy, but the construction and principles of the two governments are so radically different, that it will be easily perceived by the slightest observer, the same effects are not to be expected from it, at least not to the same extent in this, that are experienced in that. Making due allowance for those considerations that should be taken into view, I am therefore led to believe that the defective principles of the present government, through the means of the senate, in respect to form and representation, have been communicated to this branch of the constitution. Appointed by the states and of course responsible to them for their conduct, the senators will act for those to which they respectively belong; nor can we reasonably expect from their concession any great accommodation. Thus the state spirit, with an equality among the members of the union, will be preserved in this branch of the government, and if there was an absolute necessity for yielding the point of representation, yet none suggests itself, at least to me, for not remedying the defect in the form, which has been found so pernicious in the present one.

By the consent of two thirds of the senators *present,* treaties shall be 5.21.33
formed; by that of a majority, ambassadors, other public ministers, and consuls, judges of the supreme court and other public officers not otherwise provided for by law, shall be appointed. The subjecting the decision of important questions to a dependance on the occasional presence or absence of any of the members, more especially as no quorum is established,[17] appears to me improper. If the vote of two thirds of the body is in any instance necessary, for the security of the interests of any part of the union, why should the death or delinquency of a member deprive it of this safeguard, by submitting them to the controul of perhaps less than one

fourth?[18] It is further to be observed that whatever influence this branch may have in directing the measures of the executive, from the nature of its appointment, will be exerted to give it a narrow state byas, and that from this source alone, constructed as the two branches are, much injury is to be expected from this extraordinary coalition.

"The senate shall have the sole power to try all impeachments." The president is to act under their controul in the cases above stated, if in any instance a wanton violation by their direction or permission should be made, which though not probable is yet practicable, of the rights or interests of any part of the community, and after solemn debate in the house of representatives, this high officer should be brought by impeachment before this body to expiate his offence, what would be his fate, especially as he still held his office and might wield his powers in his defence? A king of England involved himself in great difficulties by an attempt to establish the validity of a general pardon, but had the constitution submitted the trial of state offenders to himself, there would have been no occasion for the contest. Admitting however the members of this body to be incapable of moral turpitude, may we not suppose, as might be the case in that of any individual state; in the operation of this government, that offences might be committed against one quarter of the community, and which before a dispassionate court would receive severe reprehension, that would be highly beneficial to the others? And in such a case could we expect from the representatives of these states a candid or impartial decision against the interests of their constituents?

5.21.34 The placing the executive power in the hands of one person, appears to be perfectly right. If this branch had been put into commission, the state spirit would have been communicated to it, and have tainted all its measures; in addition to this there would have been less responsibility. But the mode of election, does not in all respects appear, to merit such commendation. A departure from the strict representative line, by adding the equal vote of the senate to the number each state hath in the house of representatives, is made in the first instance; but it is still more exceptionable in other respects. If an election shall not be made, and in all probability this will often be the case, indeed the presumption is the contrary will seldom happen, a very extraordinary subsidiary mode is resorted to. Those having the five highest votes are to be ballotted for by the house of representatives, the vote to be taken by states, and one member from each giving[19] the vote of the state. All cases that the constitution will admit of, should be considered as likely to happen some time or other. No person then I am persuaded who will make the calculation, can behold the facility by which the chair of the United States may be approached and achieved, even contrary to the wishes of the people, without equal anxiety and surprize.* Let it be admitted that the

*It is obvious that seven men only may elect the President; the constitution has not been copied nor any part of it, because it is presumed to be in the memory of every person.

temper of the times and the ardent spirit of liberty which now prevails, will guard it for the present from such easy access; but that person has profited but little, from the faithful admonition, which all history has given him, who shall conclude from thence, that this will always be the case. His right to remain in office after impeachment, with the influence though diminished, still attending it, appears to be highly improper. That of adjournment in case of impeachment, between the two branches, to such time as he shall think fit, is certainly too unqualified and extensive. The impropriety of the union of this branch with the senate has already been sufficiently dilated on; it will therefore be unnecessary to repeat the same arguments here. Contemplating however the consequences of this union, the expiration of his service, should in my opinion be accompanied with a temporary disqualification. The senators, would to save the commonwealth from injury, be able to give instruction to a new president, and it would perhaps be better, to change occasionally the acting party, of a combination that might otherwise be dangerous.

From the first clause respecting the judiciary it is obvious, that the Congress, although there shall be one Supreme Court only, may establish as many subordinate to it, as they shall think fit. The presumption is, they will establish so many as shall be necessary for the discharge of the functions of the department, to the advantage of the government, and benefit of the people. The extent therefore of the duties which become the exclusive object of a fœderal court, may give some insight into that establishment they might probably adopt; and when we observe that the cognizance of all cases arising under the constitution and the laws, either of a civil or criminal nature, in law or equity, with those other objects which it specifies, even between the citizens of the same state, are taken from those of each state and absolutely appropriated to the courts of the United States, we are led into a view of the very important interests it comprehends, and of the extensive scale upon which it operates. It will therefore be the duty of Congress to organize this branch, by the establishment of such subordinate courts, throughout the whole confederacy, in such manner as shall be found necessary to support the authority of the government, and carry justice home, so far as it may be practicable, to the doors of all its inhabitants. What mode may be best calculated to accomplish this end, belongs to that body to determine. Bound by no rule they may it is true (as in the commencement they probably would) avail themselves of those of each state; but this would be a measure of expedience only and not of right and may hereafter be changed as the fortunes of the government, and considerations of expedience may dictate. How far it might be proper to authorise the subjects of foreign powers to carry the citizens of any state into a fœderal court, and afterwards by appeal into the Supreme Court, is of questionable propriety. The principal argument in its favour appears to be that of securing the United States from the danger of controversies with such powers, under

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the partial decisions of those of the individual states. But if they knew such cases, were by a fundamental of our government submitted to them, it were reasonable to suppose, that all just cause of complaint, would be removed. The submission to a fœderal court of contests upon ordinary subjects, between citizens of the same state, or even of different states, or indeed upon any subject, that did not arise under territorial controversies between states, and which originally belonged to that court, appears to be highly improper and altogether unnecessary. The appeal as to fact is still more extraordinary and exceptionable. The verdict which has been found must of course be set aside, and the court subjected to the necessity of either trying the cause upon the evidence already given, with liberty to construe it at pleasure; of hearing it over again admitting other evidence, being judges of the fact themselves; or submitting it to another jury to find a second verdict, either of which modes appears to be highly exceptionable; for if the court become judges of fact under the old or a new trial, the right of trial by jury is dispensed with; and if a second jury shall be summoned, independent of the difficulty and hardship, attending the submission of controversies contracted at the extremities of the union, by people in some degree variant in their manners, customs, and prejudices, to a jury formed of those of any one town, the parties are necessarily exposed to the loss of time, (of importance especially to the lower classes of society) and the enormous expence inseparable from a tryal carried on at a great distance from home. What necessity there can be, so effectually to lay aside the state courts, (which though perhaps improperly organized at present are yet capable of improvement) and subject the good people of America to such new and unheard of difficulties, I must confess I am not able to comprehend, nor can I readily forsee the very important consequences into which it may lead.

5.21.36 Having now taken a view as concisely as I have been able, of the defects of the present system, suggested their remedy with the principles upon which it is founded, examined the constitution by that standard, and shewn wherein I have either approved or disapproved of it; perhaps it may be expected (as a deduction from the foregoing principles) that I should make some calculation, of the probable course and ultimate fate of the government, should it be adopted in its present form, since it might have some influence upon your opinion in the present instance. This must however be altogether conjectural, for in the operation of government, as in that of all other powers after consequences, have been clearly demonstrated, as resulting from certain causes, oftentimes some incident, not contemplated, nor taken into the combination, or extra circumstance arises, that gives it a different direction. To form any estimate in this respect some peculiarities present themselves to view very deserving of attention. The mixture between the general and state governments, being partly a consolidated and partly a confederated one, suggests a balance between sovereignties that is

new and interesting. So far as it proceeds from the people and its powers embrace the care of their interests, it partakes of the qualities of the former; and so far as the state governments remain of the latter. In weighing the momentum of their relative strength or force it is no less difficult to determine which will preponderate. Founded alike by the people, by the people also may either be changed at pleasure. If the precise boundary had been drawn between them, the proper checks established, and the general government well poised, [it][20] might for a long time, and I should hope forever, be stationary; defective in these respects it will probably soon experience a change. Pursuing a national course under those shocks it must expect, without any foreign impression to give it the fairest hopes, let us enquire what the interests of the people will dictate, for let that be its direction. Independent state sovereignties, or partial confederacies, have been reprobated in its commencement. Its foundation has been laid on the ruin of all schemes that had that tendency, and it is presumeable it would in no event embrace either, at least until it had experienced a great vicissitude of fortunes. If then it escaped the first paroxisms, the severe struggles, and violent efforts against it, exposed it to, its establishment might be considered as complete. And suppressing the spirit of opposition, its constitutional basis will be found broad and extensive. It is not the aid of the Delphic oracle, the blind zeal of enthusiasim, that will be called in to its support. It has the protection of the true religion, of divine authority itself, to shield it from danger. The exercise of powers in common that will be allowed of in its commencement, must yield on the part of the states, to its acquiring strength. And wielding those the constitution has given it without availing itself of such as were constructive, the state governments, under this progress, would soon become a burthen to the people. The confederated principle, or the spirit of state sovereignty, would however not be inactive, but operate so as to bring on the crisis; and the constitution itself presents a fruitful source of controversy, for the spirit of accommodation, or the mutual fear of danger, must be great, where the line between them is not exactly drawn, if they do not interfere. If this government had been organized over one state, with a moderate extent of territory, its natural progress, through the Senate, would be to aristocracy. But as it is I am inclined to believe, that although in its operation it may bear that tone, yet when it becomes convulsed and experiences a change, it will hold a different direction. Even the construction of that branch in its operation will contribute to hurry it into monarchy, and as there is no second class or order of nobles in America it is difficult to say in what it will terminate. If there was such an order, our earnest hopes and prayers should be, every circumstance considered, that it be a limitted one.[21] For these reasons and not that I fear any danger to the liberties of our country, from the effective sorce of the government, exerted immediately against the good people of America, could I wish those checks and guards adopted, omitted at present from neglect and

an over confidence of our security, but which it is possible if the present opportunity is lost, we may contend for hereafter in vain. Political institutions, we are taught by melancholy experience, have their commencement, maturity and decline; and why should we not in early life, take those precautions that are calculated to prolong our days, and guard against the diseases of age? Or shall we rather follow the example of the strong, active, and confident young man, who in the pride of health, regardless of the admonition of his friends, pursues the gratification of unbridled appetites, and falls a victim to his own indiscretion, even in the morn of life, and before his race had been fairly begun.

5.21.37 I have to apologize for the trouble I have given you in the perusal of these observations. I owe it to myself however to observe that the bounds within which I have been under the necessity of confining this letter has prevented my going into that detail, often necessary, especially on so intricate a subject for the sake of illustration; and the want of leisure has I fear, prevented even a tolerable degree of correctness. But if I have been able to explain myself to your satisfaction I shall be contented. Upon the whole it results that although I am for a change, and a radical one, of the confederation, yet I have some strong and invincible objections to that proposed to be substituted in its stead. Those of less weight might be yielded for the sake of accomodation; but until an experiment shall prove the contrary, I shall always believe that the exercise of direct taxation and excise, by one body, over the very extensive territory contained within the bounds of the United States, will terminate either in anarchy and a dissolution of the government, or a subversion of liberty. The judiciary I consider as illy organized and its powers as too extensive, the whole government in a great measure without responsibility, and the rights of men too loosely guarded. And when I behold the Senate, a corps more diplomatic in its principle, permanent in its station, and systematic in its operations, than even the late Congress itself, wielding in the one hand the strong powers of the Executive, and with the other controuling and modifying at pleasure, the movements of the legislature, I must confess that not only my hopes of the beneficial effects of the government, are greatly diminished, but that my apprehensions of some fatal catastrophe are highly awakened. We have struggled long to bring about this revolution, we have fought and bled freely to accomplish it, and in other respects braved difficulties almost without a parellel. Why then this precipitation, why this hurry upon a subject so momentous, and equally interesting to us all? Is it to be supposed that unless we immediately adopt this plan, in its fullest extent, we shall forever loose the opportunity of forming for ourselves a good government? That some wild phrensy or delirium of the brain will seize upon us, and losing all recollection of things past, and abandoning the social ties that bind mankind together, we shall fall into some strange and irritrievable disorder? Or is it not more natural to suppose that perfection in any science, if attainable at

all, is to be approached by slow and gradual advances, and that the plan of government now presented for your inspection, though a powerful effort of the human mind, is yet to be improved by a second essay?

The subject now submitted to you, is no less interesting than it is important. Providence hath long seen nine-tenths of the habitable globe immersed, and groaning under the dreadful oppressions of slavery. To the people of America, to you it belongs to correct the opposite extreme. To form a government that shall shield you from dangers from abroad, promote your general and local interests, protect in safety the life, liberty, and property, of the peaceful, the virtuous and the weak, against the encroachments of the disorderly and licentious. Whether they are now endangered, whether the plan now before you, presented under the most faithful and illustrious auspices; under the auspices of men whose abilities and integrity you have long had the most satisfactory proofs, and who to the most important services, by abandoning the enjoyments of a peaceful and happy retirement, have added this further testimony, of their never failing attachment to the interests of their country, will accomplish this end, or is capable of still further improvement, belongs to you to determine. To differ in any respect from these men, is no pleasant thing to me; but being called upon an awful stage upon which I must now bear a part, I have thought it my duty to explain to you the principles on which my opinions were founded, under this further assurance, that if after a candid review, they shall appear indefensible, I will most chearfully submit to be governed by your wishes, and obey other instructions. 5.21.38

1. Compare the discussion that follows with *The Federalist* no. 15; see also Monroe's speech in the Virginia ratifying convention, 10 June 1788, Elliot III, 219.

2. Publius makes use of this principle in his famous defense of the extended republic. "The influence of factious leaders may kindle a flame within their particular States but will be unable to spread a general conflagration through the other States." *The Federalist* no. 10, 84. On the extended republic, see Agrippa IV, 4.6.16 n. 10.

3. Opposition to consolidation is close to being the prime article of the Anti-Federal faith (see Plebeian 6.11.15 n. 9); yet there were a few Anti-Federalists like Monroe who were attracted by the glory of consolidation if only it could be achieved. Cf. Symmes 4.5.3; Cato [South Carolina] 5.10.

4. The fundamental *principle* of confederacy is the interests of the separate parts; see Agrippa VII, 4.6.58 n. 31.

5. Cf. Monroe's discussion in Elliot III, 216.

6. Cf. reference in Cato III, 2.6.13 n. 8.

7. See [Maryland] Farmer II, 5.1.30–31 and n. 24.

8. Cf. James Madison's statement in the Constitutional Convention about the desirability of an enumeration and definition of the powers of the national legislature, his growing doubts of the practicability of such an enumeration, and the need to submit to any means necessary to "promote for the safety, liberty and happiness of the Community." Farrand I, 53 (31 May). See also *The Federalist* no. 37, 234–38, and Brutus VI, 2.9.80 n. 56. While Monroe's discussion is typical, A [Pennsylvania] Farmer (3.14.8) probes more deeply into the distinction. Cf. One of the Common People 4.8.1; Smith 6.12.31.

9. In the Virginia convention Monroe argued as follows: "What are the powers which the federal government ought to have? I will draw the line between the powers

necessary to be given to the federal, and those which ought to be left to the state governments. To the former I would give control over the national affairs; to the latter I would leave the care of local interests. Neither the Confederation, nor this Constitution, answers this discrimination. To make the first a proper federal government, I would add to it one great power—I would give it an absolute control over commerce. To render the system under consideration safe and proper, I would take from it one power only—I mean that of direct taxation." Elliot III, 214.

10. Locke, *Second Treatise on Government* XI–XIII; Montesquieu, *The Spirit of Laws* XI, ch. 6. For other Anti-Federal discussions of separation of powers see Centinel II, 2.7.50 n. 29.

11. The reference is to J. L. DeLolme, *The Constitution of England,* whose argument is in many aspects similar; but whereas Monroe is concerned with the tendency of the legislature to encroach on the other branches of the government, DeLolme was concerned with the tendency for the people to be betrayed by their representatives of whatever kind. See Bk. II, chs. 9–10 and *passim.*

12. Cf. *The Federalist* no. 51, 347–50.

13. See 5.21.9. In the Virginia ratifying convention Monroe argued that, "the President ought to act under the strongest impulses of rewards and punishments, which are the strongest incentives to human actions." Elliot III, 488. Cf. *The Federalist* nos. 76–77.

14. *The Federalist* no. 68. On the election of the President see above The Federal Farmer III, 2.8.29 n.23.

15. See *The Federalist* no. 70 and J. L. DeLolme, *The Constitution of England* II, ch. 2.

16. See *The Federalist* no. 22, 143–44.

17. "More especially . . . established": this clause is striken from the Library of Congress copy by a reviser who may have been Monroe.

18. "by submitting . . . one fourth?": see note 17.

19. "giving": the reviser substitutes, "authorized to give."

20. "it": inserted by the reviser.

21. For a helpful elaboration of this point, see Monroe's comments in the Virginia ratifying convention Elliot III, 217. See [Maryland] Farmer II, 5.1.30–31 and n. 24.

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